



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
1	Friday, June 20, 2003	July 9, 2003
2	Friday, July 4, 2003	July 23, 2003
3	Friday, July 18, 2003	August 6, 2003

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

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Iowa Administrative Bulletins (July 2002 through March 5, 2003)
Iowa Court Rules (updated through February 2003)

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To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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EDUCATIONAL EXAMINERS BOARD[282]

Abuse identification training required for renewal of substitute authorization, 14.143(3) IAB 5/28/03 ARC 2501B	Room 3 North Grimes State Office Bldg. Des Moines, Iowa	June 26, 2003 1:30 p.m.
Evaluator training required for renewal of administrator's license, 17.7(3) IAB 5/28/03 ARC 2502B	Room 3 North Grimes State Office Bldg. Des Moines, Iowa	June 26, 2003 2 p.m.
Abuse identification training required for renewal of behind-the-wheel driving instructor authorization, 21.5 IAB 5/28/03 ARC 2503B	Room 3 North Grimes State Office Bldg. Des Moines, Iowa	June 26, 2003 1:30 p.m.

EDUCATION DEPARTMENT[281]

Professional development, 12.7 IAB 5/28/03 ARC 2499B (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 17, 2003 3 to 5 p.m.
	Northern Trails AEA 9184 B 265th St. Clear Lake, Iowa	June 17, 2003 3 to 5 p.m.
	Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	June 17, 2003 3 to 5 p.m.
	Ottumwa Comm. School District H.S. 422 McCarroll Dr. Ottumwa, Iowa	June 17, 2003 3 to 5 p.m.
	Great River AEA 3601 W. Avenue Rd. Burlington, Iowa	June 17, 2003 3 to 5 p.m.
	Dubuque Comm. School District Forum 2300 Chaney Rd. Dubuque, Iowa	June 17, 2003 3 to 5 p.m.
	Buena Vista University 610 W. Fourth St. Storm Lake, Iowa	June 17, 2003 3 to 5 p.m.
	Public Library 507 Poplar Atlantic, Iowa	June 17, 2003 3 to 5 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 21.2, 22.1, 23.1, 25.1(9) IAB 6/11/03 ARC 2525B	Conference Room 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 15, 2003 1 p.m.
Controlling pollution—exemptions for specific types of equipment, 22.1(2) IAB 5/14/03 ARC 2467B	Conference Rooms 2 and 3 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	June 13, 2003 1 p.m.
Reauthorization for general permit no. 4, 64.15(4), 69.1(2), 69.2, 69.9(1), 69.10(6), 69.11(1) IAB 6/11/03 ARC 2526B	Delaware County Community Center 200 E. Acres Manchester, Iowa	July 1, 2003 10 a.m. to 1 p.m.
	Conference Room Atlantic Municipal Utilities 15 W. Third Atlantic, Iowa	July 2, 2003 1 to 4 p.m.
	Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	July 3, 2003 9 a.m. to 12 noon
	Wallace Auditorium Wallace State Office Bldg. Des Moines, Iowa	July 8, 2003 1 to 4 p.m.
	Helen Wilson Gallery, Public Library 120 E. Main Washington, Iowa	July 9, 2003 9 a.m. to 12 noon
	Muse-Norris Conference Center NIACC 500 College Dr. Mason City, Iowa	July 10, 2003 12 noon to 3 p.m.

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Hospitals, 51.7(4), 51.8, 51.53 IAB 6/11/03 ARC 2520B	Conference Room 320 Lucas State Office Bldg. Des Moines, Iowa	July 2, 2003 10 a.m.
Nursing facilities and residential care facilities, 58.51, 60.12(1), 61.12(2) IAB 6/11/03 ARC 2521B	Conference Room 311 Lucas State Office Bldg. Des Moines, Iowa	July 3, 2003 10 a.m.

INSURANCE DIVISION[191]

Electronic delivery of group life insurance certificates, 30.8 IAB 6/11/03 ARC 2529B	330 Maple St. Des Moines, Iowa	July 2, 2003 10 a.m.
Electronic delivery of accident and health group insurance certificates, 35.8 IAB 6/11/03 ARC 2530B	330 Maple St. Des Moines, Iowa	July 2, 2003 10 a.m.

NATURAL RESOURCE COMMISSION[571]

Use of stationary blinds and waterfowl decoys on pools 16, 17 and 18 on Mississippi River, 51.5 IAB 5/28/03 ARC 2493B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 19, 2003 10 a.m.
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PERSONNEL DEPARTMENT[581]

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PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology arts and sciences examiners, amend chs 59 to 61 and 63; adopt new ch 65 IAB 5/28/03 ARC 2483B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 23, 2003 9 to 11 a.m.
Board of examiners for the licensing and regulation of hearing aid dispensers, amend chs 120, 121; adopt new ch 124 IAB 5/28/03 ARC 2484B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 20, 2003 9 to 11 a.m.
Psychology examiners, amend chs 239, 240; adopt new ch 242 IAB 5/28/03 ARC 2485B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 19, 2003 9 to 11 a.m.
Social work examiners, amend chs 279, 280; adopt new chs 282, 283 IAB 6/11/03 ARC 2514B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 1, 2003 9 to 11 a.m.
Speech pathology and audiology examiners, amend chs 299, 300, 303; adopt new ch 304 IAB 5/28/03 ARC 2512B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 26, 2003 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Out-of-hospital do-not-resuscitate orders, ch 142 IAB 5/28/03 ARC 2491B	EMS Bureau Conference Room Suite D 401 SW Seventh St. Des Moines, Iowa	June 17, 2003 10 a.m.
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Exit requirements, 5.2, 5.50 to 5.65 IAB 5/28/03 ARC 2488B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 19, 2003 9:30 a.m.
Fire safety requirements for hospitals, licensed health care facilities, and assisted living facilities, 5.626, 5.900 to 5.925 IAB 5/28/03 ARC 2487B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 19, 2003 10 a.m.

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IAB 5/14/03 **ARC 2459B**

Hearing Room
350 Maple St.
Des Moines, Iowa

June 27, 2003
10 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Claims and benefits,
amend ch 24
IAB 6/11/03 **ARC 2518B**

1000 E. Grand Ave.
Des Moines, Iowa

July 2, 2003
9:30 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 2536B**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 2, “Agency Procedure for Rule Making,” Iowa Administrative Code.

The proposed amendments, which ensure consistency in terms and correct unclear wording and grammatical oversights, are made pursuant to Executive Order Number 8.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 1, 2003, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609; telephone (515)242-3344.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapter 261.

The following amendments are proposed.

Amend **283—Chapter 2** as follows:

CHAPTER 2
AGENCY COMMISSION PROCEDURE
FOR RULE MAKING

283—2.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the *agency commission* are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

283—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the *agency commission* may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by the *agency commission* by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

283—2.3(17A) Public rule-making docket.

2.3(1) Docket maintained. The *agency commission* shall maintain a current public rule-making docket.

2.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the *agency commission*. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the *executive* director for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of *agency commission* personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the *agency commission* of that possible rule. The *agency commission* may also

may include in the docket other subjects upon which public comment is desired.

2.3(3) No change.

a. to f. No change.

g. The current status of the proposed rule and any *agency commission* determinations with respect thereto;

h. Any known timetable for *agency commission* decisions or other action in the proceeding;

i. to l. No change.

283—2.4(17A) Notice of proposed rule making.

2.4(1) Contents. At least 35 days before the adoption of a rule the *agency commission* shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. to c. No change.

d. Where, when, and how persons ~~may present their views may be presented~~ on the proposed rule; and

e. Where, when, and how persons ~~may demand~~ an oral proceeding ~~may be demanded~~ on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the *agency commission* shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by ~~that the~~ omitted text of the proposed rule, and the range of possible choices being considered by the *agency commission* for the resolution of each of those issues.

2.4(2) No change.

2.4(3) Copies of notices. Persons desiring to receive copies of all future Notices of Intended Action by subscription must file with the ~~agency with the commission~~ a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the *agency commission* shall mail or electronically transmit a copy of that notice to ~~subscribers those persons~~ who have filed a written request for either mailing or electronic transmittal with the *agency commission* for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

283—2.5(17A) Public participation.

2.5(1) Written comments. For at least 20 days after publication of Notice of Intended Action, ~~persons may submit argument arguments~~, data, and views, ~~may be submitted~~ in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609, or to the person designated in the Notice of Intended Action.

2.5(2) Oral proceedings. The *agency commission* may, at any time, schedule an oral proceeding on a proposed rule. The *agency commission* shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the *agency commission* by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

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1 *a.* A request by one or more individual persons must be signed by each of ~~them~~ *individual* and *must* include the address and telephone number of each of ~~them~~ *individual*.

2 *b.* A request by an association must be signed by an officer or designee of the association, and must contain a statement that the association has at least 25 members, and *must include* the address and telephone number of the person signing ~~that the~~ request.

3 *c.* A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing ~~that the~~ request.

2.5(3) Conduct of oral proceedings.

a. No change.

b. **Scheduling and notice.** An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. **Presiding officer.** The *agency commission*, a member of the *agency commission*, or another person designated by the *agency commission* who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the *agency commission* does not preside, the presiding officer shall prepare a memorandum for consideration by the *agency commission* summarizing the contents of the presentations made at the oral proceeding unless the *agency commission* determines that such a memorandum is unnecessary because the *agency commission* will personally listen to or read the entire transcript of the oral proceeding.

d. **Conduct of proceeding.** At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, ~~which may include~~ *may be made including* data, views, comments, or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the *agency commission* at least one business day prior to the proceeding and indicate the general subject of ~~their the~~ presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the *agency commission* decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters ~~which have already been~~ submitted in writing.

(3) and (4) No change.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the *agency commission*.

(6) to (8) No change.

2.5(4) Additional information. In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the *agency commission* may obtain information concerning a proposed rule through any other lawful means deemed appropriate ~~under the circumstances~~.

2.5(5) Accessibility. The *agency commission* shall schedule oral proceedings in rooms accessible to, and functional for, persons with physical disabilities. Persons who have special requirements should contact the administrative secretary at College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609, or (515) 281-3504 242-3341 in advance to arrange access or other needed services.

283—2.6(17A) Regulatory analysis.

2.6(1) Definition of small business. A “small business” is defined in ~~1998 Iowa Acts, chapter 1202, section 10(7) Iowa Code section 17A.4A(7)~~.

2.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the *agency’s commission’s* small business impact list by making a written application addressed to College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. The application for registration shall state:

a. to e. No change.

The *agency commission* may, at any time, request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The *agency commission* may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization ~~wishes~~ *wants* to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

2.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the *agency commission* shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the *agency commission* shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

2.6(4) Qualified requesters for regulatory analysis—economic impact. The *agency commission* shall issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2a), Iowa Code section 17A.4A(2a)~~ after a proper request from:

a. and b. No change.

2.6(5) Qualified requesters for regulatory analysis—business impact. The *agency commission* shall issue a regulatory analysis of a proposed rule that conforms to the requirements of ~~1998 Iowa Acts, chapter 1202, section 10(2b), Iowa Code section 17A.4A(2b)~~ after a proper request from:

a. to c. No change.

d. An organization representing at least 25 small businesses. That organization shall list the ~~name names~~, address ~~addresses~~ and telephone ~~number numbers~~ of not less than 25 small businesses it represents.

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2.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis the *agency commission* shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4) *Iowa Code* section 17A.4A(4).

2.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the *agency commission*. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1) *Iowa Code* section 17A.4A(1).

2.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5) *Iowa Code* section 17A.4A(4,5).

2.6(9) Publication of a concise summary. The *agency commission* shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5) *Iowa Code* section 17A.4A(5).

2.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a) *Iowa Code* section 17A.4A(2a), unless a written request expressly waives one or more of the items listed in the section.

2.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as *representatives* of a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b) *Iowa Code* section 17A.4A(2b).

283—2.7(17A,25B) Fiscal impact statement.

2.7(1) No change.

2.7(2) If the *agency commission* determines, at the time it adopts a rule, that the fiscal impact statement upon which the rule is based contains errors, the *agency commission* shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

283—2.8(17A) Time and manner of rule adoption.

2.8(1) Time of adoption. The *agency commission* shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the *agency commission* shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

2.8(2) Consideration of public comment. Before the adoption of a rule, the *agency commission* shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

2.8(3) Reliance on *agency commission* expertise. Except as otherwise provided by law, the *agency commission* may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

283—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) The *agency commission* shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. and c. No change.

2.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the *agency commission* shall consider the following factors:

a. to c. No change.

2.9(3) The *agency commission* shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the *agency commission* finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

2.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the *agency commission* to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

283—2.10(17A) Exemptions from public rule-making procedures.

2.10(1) Omission of notice and comment. To the extent the *agency commission* for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the *agency commission* may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The *agency commission* shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.10(2) Public proceedings on rules adopted without them. The *agency commission* may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the *agency commission* shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the *agency commission* may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

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283—2.11(17A) Concise statement of reasons.

2.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the *agency commission* shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

2.11(2) Contents. The concise statement of reasons shall contain:

- a. and b. No change.
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the *agency's commission's* reasons for overruling the arguments made against the rule.

2.11(3) Time of issuance. After a proper request, the *agency commission* shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

283—2.12(17A) Contents, style, and form of rule.

2.12(1) Contents. Each rule adopted by the *agency commission* shall contain the text of the rule and, in addition:

- a. The date the *agency commission* adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, *Iowa Code section 17A.4A(1b)* or the *agency commission* in its discretion decides to include such reasons;
- c. to e. No change.
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, *Iowa Code section 17A.4A(1b)* or the *agency commission* in its discretion decides to include such reasons; and
- g. The effective date of the rule.

2.12(2) Incorporation by reference. The *agency commission* may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the *agency commission* finds that the incorporation of its text in the *agency commission* proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the *agency commission* proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The *agency commission* may incorporate such matter by reference in a proposed or adopted rule only if the *agency commission* makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from ~~this agency~~ *the commission*, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The *agency commission* shall retain permanently a copy of any materials incorporated by reference in a rule of the *agency commission*.

If the *agency commission* adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

2.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the *agency commission* shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall ~~also~~ *also shall* describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the *agency commission*. The *agency commission* will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the *agency commission* shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

2.12(4) Style and form. In preparing its rules, the *agency commission* shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

283—2.13(17A) Agency rule-making record.

2.13(1) Requirement. The *agency commission* shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

2.13(2) Contents. The *agency commission* rule-making record shall contain:

- a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of *agency commission* submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;
- b. Copies of any portions of the *agency's commission's* public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;
- c. All written petitions, requests, and submissions received by the *agency commission*, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the *agency commission* and considered by the executive director, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the *agency commission* is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the *agency commission* shall identify in the record the particular materials deleted and state the reasons for that deletion;

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d. to h. No change.

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any *agency commission* response to that objection.

j. and k. No change.

2.13(3) Effect of record. Except as otherwise required by a provision of law, the *agency commission* rule-making record required by this rule need not constitute the exclusive basis for *agency commission* action on that rule.

2.13(4) Maintenance of files. The *agency commission* shall maintain the rule-making file for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 2.13(2) "g," "h," "i," or "j."

283—2.14(17A) Filing of rules. The *agency commission* shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the *agency commission* shall use the standard form prescribed by the administrative rules coordinator.

283—2.15(17A) Effectiveness of rules prior to publication.

2.15(1) Grounds. The *agency commission* may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The *agency commission* shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.15(2) Special notice. When the *agency commission* makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3), the *agency commission* shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the *agency commission* to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the *agency commission* of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 2.15(2).

283—2.16(17A) General statements of policy.

2.16(1) Compilation, indexing, public inspection. The *agency commission* shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10 11)"a," "c," "f," "g," "h," "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7 11)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

2.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this subsection shall not be relied on by the *agency commission* to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

283—2.17(17A) Review by agency commission of rules.

2.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the *agency commission* to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the *agency commission* shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The *agency commission* may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

2.17(2) In conducting the formal review, the *agency commission* shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the *agency's commission's* findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the *agency commission* or granted by the *agency commission*. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the *agency's commission's* report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ARC 2535B**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 3, “Declaratory Orders,” Iowa Administrative Code.

The proposed amendments, which ensure consistency in terms and correct unclear wording and grammatical oversights, are made pursuant to Executive Order Number 8.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 1, 2003, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609; telephone (515)242-3344.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapter 261.

The following amendments are proposed.

Amend **283—Chapter 3** as follows:

**CHAPTER 3
DECLARATORY ORDERS**

283—3.1(17A) Petition for declaratory order. Any person may file a petition with the college student aid commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. A petition is deemed filed when it is received by ~~that office~~ *the commission*. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides ~~the agency~~ an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

COLLEGE STUDENT AID COMMISSION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. to 8. No change.

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

283—3.2(17A) No change.

283—3.3(17A) Intervention.

3.3(1) and **3.3(2)** No change.

3.3(3) A petition for intervention shall be filed at 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. Such a petition is deemed filed when it is received by ~~that office~~ *the commission*. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

COLLEGE STUDENT AID COMMISSION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. to 6. No change.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

283—3.4(17A) to 283—3.6(17A) No change.

283—3.7(17A) Consideration. Upon request by petitioner, the college student aid commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the question raised. ~~Also, comments~~ *Comments* on the questions raised may be submitted to the commission by any person.

283—3.8(17A) Action on petition.

3.8(1) Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5), Iowa Code section 17A.9(5)~~ after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by ~~1998 Iowa Acts, chapter 1202, section 13(5) Iowa Code section 17A.9(5).~~

3.8(2) No change.

283—3.9(17A) Refusal to issue order.

3.9(1) The commission shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1), Iowa Code section 17A.9(1)~~ and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. to 3. No change.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other ~~agency commission~~ or judicial proceeding, that may definitively resolve them.

5. to 7. No change.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an ~~agency a commission~~ decision already made.

9. and 10. No change.

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3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final *agency commission* action on the petition.

3.9(3) No change.

283—3.10(17A) and 283—3.11(17A) No change.

283—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the commission. The issuance of a declaratory order constitutes final *agency commission* action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

ARC 2534B

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COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to rescind Chapter 4, “Contested Cases,” Iowa Administrative Code, and adopt new Chapter 4, “Due Process.”

The new chapter allows the rules to be organized more sequentially by allowing “Due Process,” currently Chapter 5, to precede “Contested Cases,” currently Chapter 4.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 1, 2003, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609; telephone (515)242-3344.

This rule is intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapter 261.

The following amendment is proposed.

Rescind 283—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
DUE PROCESS

283—4.1(261) Appeals. This chapter describes procedures for appeal to commission decisions covering student eligibility for state scholarship and grant awards, adjustment in award amounts, refunds of awards, and institutional eligibility for participation in state scholarship and grant programs.

4.1(1) Administrative staff of the commission shall make all decisions in accordance with established policies and published administrative rules approved by the commission and shall notify the concerned individual or institution of these decisions within a reasonable time after inquiry.

4.1(2) If an individual, institution, or any duly appointed representative thereof disagrees with a staff decision, written

evidence setting forth the reasons for disagreement shall be presented to the executive director of the commission. The evidence must be presented within 60 days after notification of the staff decision, and the appellant may request a hearing.

a. If no hearing is requested, the executive director will consider all evidence provided and will notify the appellant within 30 days whether the decision is retracted, modified or upheld. The appellant will be advised of the appellant’s right to carry the appeal to a meeting of the full commission or to an appeals panel appointed by the commission.

b. If a hearing is requested, the executive director will follow the contested case procedures in 283—Chapter 5.

This rule is intended to implement Iowa Code section 261.3.

ARC 2533B

COLLEGE STUDENT AID
COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to rescind Chapter 5, “Due Process,” Iowa Administrative Code, and adopt new Chapter 5, “Contested Cases.”

The new chapter allows the rules to be organized more sequentially by allowing “Due Process,” currently Chapter 5, to precede “Contested Cases,” currently Chapter 4.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 1, 2003, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609; telephone (515)242-3344.

These rules are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapter 261.

The following amendment is proposed.

Rescind 283—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
CONTESTED CASES

283—5.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the college student aid commission.

283—5.2(17A) Definitions. Except where otherwise specifically defined by law:

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

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"Presiding officer" means the executive director.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the college student aid commission did not preside.

283—5.3(17A) Time requirements.

5.3(1) Time shall be computed as provided in Iowa Code section 4.1(34).

5.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

283—5.4(17A) Requests for contested case proceeding.

Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed, and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

283—5.5(17A) Notice of hearing.

5.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

5.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and

- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 5.6(17A), that the presiding officer be an administrative law judge.

283—5.6(17A) Presiding officer.

5.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days or such other time period the commission designates after service of a notice of hearing which identifies or describes the presiding officer as the executive director or members of the commission.

5.6(2) The commission or its designee may deny the request only upon a finding that one or more of the following apply:

- a. Neither the commission nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. A qualified administrative law judge is unavailable to hear the case within a reasonable time.
- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g. The request was not timely filed.
- h. The request is not consistent with a specified statute.

5.6(3) The commission or its designee shall issue a written ruling specifying the grounds for its decision within 20 days or such other time period the commission designates after a request for an administrative law judge is filed. The parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

5.6(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

5.6(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

283—5.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission, in its discretion, may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

283—5.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

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283—5.9(17A) Disqualification.

5.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

5.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other commission functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 5.9(3) and 5.23(9).

5.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

5.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 5.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall with-

draw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 5.25(17A) and seek a stay under rule 5.29(17A).

283—5.10(17A) Consolidation—severance.

5.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

5.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

283—5.11(17A) Pleadings.

5.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

5.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner’s attorney, if any.

5.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

5.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

283—5.12(17A) Service and filing of pleadings and other papers.

5.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon

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each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

5.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

5.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the college student aid commission.

5.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the college student aid commission, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

5.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
(Date) (Signature)

283—5.13(17A) Discovery.

5.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

5.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 5.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

5.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

283—5.14(17A) Subpoenas.**5.14(1) Issuance.**

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

5.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

283—5.15(17A) Motions.

5.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

5.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

5.15(3) The presiding officer may schedule oral argument on any motion.

5.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the commission or an order of the presiding officer.

5.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 5.28(17A) and appeal pursuant to 5.27(17A).

283—5.16(17A) Prehearing conference.

5.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the executive director to all parties. For good cause the presiding officer may permit variances from this rule.

5.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established

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by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

5.16(3) In addition to the requirements of subrule 5.16(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters which the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters which will expedite the hearing.

5.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

283—5.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

5.17(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

5.17(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

283—5.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

283—5.19(17A) Intervention.

5.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

5.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

5.19(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

5.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

283—5.20(17A) Hearing procedures.

5.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

5.20(2) All objections shall be timely made and stated on the record.

5.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

5.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

5.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

5.20(6) Witnesses may be sequestered during the hearing.

5.20(7) The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

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283—5.21(17A) Evidence.

5.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

5.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

5.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

5.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

5.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

5.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

283—5.22(17A) Default.

5.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

5.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

5.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days or other period of time specified by statute or rule after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 5.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

5.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

5.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days or other time specified by the commission to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

5.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

5.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 5.25(17A).

5.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

5.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

5.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under subrule 5.29(17A).

283—5.23(17A) Ex parte communication.

5.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 5.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

5.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

5.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

5.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written

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communications shall be provided in compliance with rule 5.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

5.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

5.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 5.23(1).

5.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 5.17(17A).

5.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

5.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

5.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

283—5.24(17A) Recording costs. Upon request, the college student aid commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a

copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

283—5.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the executive director. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

283—5.26(17A) Final decision.

5.26(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

5.26(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 5.27(17A).

283—5.27(17A) Appeals and review.

5.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

5.27(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

5.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the college student aid commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

5.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

5.27(5) Scheduling. The college student aid commission shall issue a schedule for consideration of the appeal.

5.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written re-

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quests to present oral argument shall be filed with the briefs. The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

283—5.28(17A) Applications for rehearing.

5.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

5.28(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the commission decision on the existing record and whether, on the basis of the grounds enumerated in subrule 5.27(4), the applicant requests an opportunity to submit additional evidence.

5.28(3) Time of filing. The application shall be filed with the college student aid commission within 20 days after issuance of the final decision.

5.28(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

5.28(5) Disposition. Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

283—5.29(17A) Stays of agency actions.

5.29(1) When available.

a. Any party to a contested case proceeding may petition the college student aid commission for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the commission. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commission may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the college student aid commission for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

5.29(2) When granted. In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in Iowa Code section 17A.19(5c).

5.29(3) Vacation. A stay may be vacated by the issuing authority upon application of the college student aid commission or any other party.

283—5.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

283—5.31(17A) Emergency adjudicative proceedings.

5.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public

health, safety, or welfare, and consistent with the Constitution and other provisions of law, the commission may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before issuing an emergency adjudicative order, the commission shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

5.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the commission's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the commission;

(3) Certified mail to the last address on file with the commission;

(4) First-class mail to the last address on file with the commission; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the commission shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

5.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

5.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the commission shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A.

ARC 2532B

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 261.3 and 261.37(5), the College Student Aid Commission proposes to rescind Chapter 6, "Public Records and Fair Information Practices," Iowa Administrative Code, and adopt a new Chapter 6 with the same title.

Current Chapter 6 adopts by reference the Uniform Rules on Agency Procedure relating to public records and fair information practices and contains only the exceptions and amendments to those rules that are specific to the College Student Aid Commission. Proposed new Chapter 6 incorporates in their entirety the Uniform Rules on Agency Procedure relating to public records and fair information practices, including the exceptions and amendments specific to the College Student Aid Commission.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 1, 2003, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609; telephone (515)242-3344.

These rules are intended to implement Iowa Code sections 17A.3(1)"a" and "b" and chapter 261.

The following amendment is proposed.

Rescind 283—Chapter 6 and adopt the following new chapter in lieu thereof:

CHAPTER 6 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

283—6.1(17A,22) Definitions. As used in this chapter:

"Commission" means the Iowa college student aid commission.

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the commission is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" means the commission, or a person lawfully delegated authority by the commission to act for the commission in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the commission.

"Record system" means any group of records under the control of the commission from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

283—6.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound commission determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The commission is committed to the policies set forth in Iowa Code chapter 22; commission staff shall cooperate with members of the public in implementing the provisions of that chapter.

283—6.3(17A,22) Requests for access to records.

6.3(1) Location of record. A request for access to a record should be directed to the Executive Director, Iowa College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609. If a request for access to a record is misdirected, commission personnel will promptly forward the request to the appropriate person.

6.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday, except holidays.

6.3(3) Request for access. Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

6.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 6.4(17A,22) and other applicable provisions of law.

6.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from commission files. Examination and copying of commission records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

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6.3(6) Copying. A reasonable number of copies of an open record may be made in the commission's office. If photocopy equipment is not available in the commission office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

6.3(7) Fees.

a. When charged. The commission may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the commission shall be prominently posted in commission offices. Copies of records may be made by or for members of the public on commission photocopy machines or from electronic storage systems at cost as determined and posted in commission offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual commission expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall prominently post in commission offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a commission clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from the requester.

283—6.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 6.3(17A,22).

6.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

6.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

6.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or tele-

phone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

6.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

6.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

283—6.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

6.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

6.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the commission by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

6.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the commission does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and

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22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

6.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

6.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

6.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

283—6.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any commission proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the Iowa college student aid commission. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

283—6.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record

concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel before the commission on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the commission to disclose records about that person to the person's attorney.

283—6.8(17A,22) Notice to suppliers of information.

When the commission requests a person to supply information about that person, the commission shall notify the person of the use that will be made of the information, which persons outside the commission might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

283—6.9(17A,22) Routine use.

6.9(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

6.9(2) To the extent allowed by law, the following are considered routine uses of all commission records:

a. Disclosure of officers, employees, and agents of the commission who have a need for the record in the performance of their duties. The custodian of the record may, upon request of an officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals regarding matters in which it performs services or functions on behalf of the commission.

d. Transfers of information within the commission, to other state agencies, or to local units of government, as appropriate, to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or to determine whether the commission is lawfully operating a program.

f. Any disclosure specifically authorized by the statute under which the record is collected or maintained.

283—6.10(17A,22) Consensual disclosure of confidential records.

6.10(1) Consent to disclosure by a subject. The subject may consent in writing to commission disclosure of confidential records as provided in rule 6.7(17A,22).

COLLEGE STUDENT AID COMMISSION[283](cont'd)

6.10(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the commission may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

283—6.11(17A,22) Release to subject. The subject of a confidential record may file a written request to review the subject's confidential records. However, the commission need not release the following records to the subject:

1. The identity of a person providing information to the commission when the information is authorized as confidential pursuant to Iowa Code subsection 22.7(18).
2. The work product of an attorney or otherwise privileged information.

The chart indicates whether the record contains personally identifiable information, and indicates the legal authority for confidentiality and for the collection of personally identifiable information. Abbreviations are used in the chart as follows:

Code	Meaning	Code	Meaning
O	The records are open for public inspection.	O/C	The record is partially open and partially confidential.
C	The records are confidential and are not open to public inspection.	O/E	The record is partially open to the public and partially exempt from disclosure.
E	The record is exempt from mandatory disclosure to members of the public.	PI	Personally identifiable information.
		NA	Not applicable.

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Records of Commission, Advisory Council, and Committees	O/E	Iowa Code 21.5	No	NA
Rule Making	O	NA	No	NA
Declaratory Ruling Records	O/C	Iowa Code 22.7	No	NA
Rules and Policy Manuals	O	NA	No	NA
General Correspondence	O/E/C	Iowa Code 22.7	Yes	NA
Publications <ul style="list-style-type: none"> • General • GSL • Scholarship 	O	NA	No	NA
Statistical Reports	O	NA	No	NA
Staff Reports	O	NA	No	NA
Financial & Administrative Records	O/E/C	Iowa Code 22.7	Yes	NA
Registration and Approval Records	O	NA	No	NA
Contracts and Interagency Agreements	O/C	Iowa Code 22.7(3)	No	NA
Sealed Bids Prior to Public Opening	C	Iowa Code 22.3 and 22.7	No	NA
Appeal Records	O/C	Iowa Code 22.7	Yes	NA
Litigation Files	O/E/C	Iowa Code 22.7	Yes	NA
Privileged Communication and Products of Attorneys Representing the Commission	E/C	Iowa Code 22.7, Iowa Code of Professional Responsibility for Lawyers, Canon 4	No	NA

3. Peace officers' investigative reports, except as required by Iowa Code subsection 22.7(5).

4. Those otherwise authorized by law.

283—6.12(17A,22) Availability of records. This rule lists the agency records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Commission records are listed by category, according to the legal basis for confidential treatment (if any). The commission administers federally funded programs, as well as state programs, and is authorized by Iowa Code section 22.9 to enforce confidentiality standards for federal law and regulations as are required for receipt of the funds. A single record may contain information from several categories.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Individual Applicant/Recipient Records				
• Guaranteed Student Loans (GSL)	C	Iowa Code 22.7	Yes	P.L. 89-329
• Parents Loans for Students (PLUS)	C	Iowa Code 22.7	Yes	Sec. 428[b-c]
• Supplementary Loans to Students	C	Iowa Code 22.7	Yes	Sec. 488[c]
• Iowa Tuition Grants	C	Iowa Code 22.7	Yes	Iowa Code 261.10
• State of Iowa Scholarship	C	Iowa Code 22.7	Yes	Iowa Code 261.2(4)
• Iowa Vocational-Technical Tuition Grant	C	Iowa Code 22.7	Yes	Iowa Code 261.17
• Paul Douglas Scholarship	C	Iowa Code 22.7	Yes	34 CFR Part 653.31
• Teacher Shortage Forgivable Loan	C	Iowa Code 22.7	Yes	Iowa Code 261.111
• Iowa Grant	C	Iowa Code 22.7	Yes	Iowa Code 261.97
• Osteopathic Physician Recruitment	C	Iowa Code 22.7	Yes	Iowa Code 261.19
• Accelerated Career Education Grant	C	Iowa Code 22.7	Yes	Iowa Code 261.22
• Iowa National Guard Educational Assistance	C	Iowa Code 22.7	Yes	Iowa Code 261.86
• Chiropractic Graduate Student Forgivable Loan	C	Iowa Code 22.7	Yes	Iowa Code 261.71
• Gov. Terry E. Branstad Iowa State Fair Scholarship	C	Iowa Code 22.7	Yes	Iowa Code 261.24
• Claims	C	Iowa Code 22.7	Yes	P.L. 89-329
• Collections	C	Iowa Code 22.7	Yes	Sec. 428[b-c] and Sec. 488[c]
Program Records				
• Iowa Work-Study	O	NA	No	NA
• Iowa Tuition Grant	O	NA	No	NA
• State of Iowa Scholarship	O	NA	No	NA
• Iowa Vocational-Technical Tuition Grant	O	NA	No	NA
• GSL (EAGLE)	O	NA	No	NA
• Paul Douglas Scholarship	O	NA	No	NA
• Teacher Shortage Forgivable Loan	O	NA	No	NA
• Iowa Grant	O	NA	No	NA
• Osteopathic Physician Recruitment	O	NA	No	NA
• Accelerated Career Education Grant	O	NA	No	NA
• Iowa National Guard Educational Assistance	O	NA	No	NA
• Chiropractic Graduate Student Forgivable Loan	O	NA	No	NA
• Gov. Terry E. Branstad Iowa State Fair Scholarship	O	NA	No	NA
Applicant/Recipient Records may contain information from restricted sources:				
• Federal Tax Returns	C	Iowa Code 422.20	Yes	P.L. 89-329
• Iowa Dept. of Revenue and Finance	C	Iowa Code 422.20	Yes	Sec. 428[b-c]
• Education Records	C	Iowa Code 22.7	Yes	Sec. 488[c]

These rules are intended to implement Iowa Code section 261.3.

ARC 2531B**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission proposes to amend Chapter 7, “Uniform Rules for Waivers,” Iowa Administrative Code.

The proposed amendments, which ensure consistency in terms and correct unclear wording and grammatical oversights, are made pursuant to Executive Order Number 8.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 1, 2003, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609; telephone (515)242-3344.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and “b” and chapter 261.

The following amendments are proposed.

Amend **283—Chapter 7** as follows:

CHAPTER 7
UNIFORM RULES FOR WAIVERS

283—7.1(261,ExecOrd11,17A) to 283—7.9(261,ExecOrd11,17A) No change.

283—7.10(261,ExecOrd11,17A) Filing of petition. A petition for a waiver must be submitted in writing to the commission’s Executive Director, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309-3609.

283—7.11(261,ExecOrd11,17A) to 283—7.16(261,ExecOrd11,17A) No change.

283—7.17(261,ExecOrd11,17A) Board Commission discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the ~~board~~ *commission* based on the unique, individual circumstances set out in the petition.

283—7.18(261,ExecOrd11,17A) to 283—17.28(261,ExecOrd11,17A) No change.

These rules are intended to implement Iowa Code chapter 17A and Executive Order Number 11.

ARC 2525B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 21, “Compliance,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” and Chapter 25, “Measurement of Emissions,” Iowa Administrative Code.

Item 1 is applicable specifically for requesting variances from construction permitting for conducting a trial burn of an alternative fuel. This proposed rule change would identify specific information the Department may request as a condition of a variance from construction permitting to conduct a trial burn using alternative fuels.

Item 2 references the most recent date for which changes to these federal regulations were published.

Item 3 clarifies that a permit must be obtained, not merely “applied for,” before construction permit limits will be valid for the particular equipment described in the paragraph. Item 3 also pertains to which air quality programs an emission reduction through a construction permit can benefit. The existing language limits the applicability of the permitted reductions only to the prevention of significant deterioration program. The change in wording expands the utilization of the permitted reductions to additional air quality program applications, such as the Title V program or the hazardous air pollutant toxics program.

Items 4 and 5 provide updates of dates for federal regulations adopted by reference.

Item 6 is revised to add clarification that the Subpart B referenced in the rule relates to Part 63 of the Code of Federal Regulations, Title 40.

Item 7 resolves a conflict in the existing rules with new EPA regulations pertaining to the federal 112(j) requirements, referred to as the “MACT hammer.” The revisions provide the federal reference to the components of the Part 1 and Part 2 112(j) application that must be submitted as part of the Title V permit application if MACT promulgation deadlines are not met. The last revision to the paragraph serves to provide clarification on the definition of “Notice of MACT Approval” as well as to identify a reference to the procedure for how to submit a “Notice of MACT Approval.”

Items 8 and 9 incorporate by reference recently promulgated federal “national emission standards for hazardous pollutants (NESHAPs).” There are 21 “new” NESHAPs.

Item 10 pertains to revisions to the Compliance Sampling Manual. The Compliance Sampling Manual has been revised to update procedures that have been outdated and to clarify and correct some of the existing language in the manual. A copy of the revised manual can be obtained from the Department. The Compliance Sampling Manual is adopted by reference in the Iowa Administrative Code, and the date change is the date of the revised manual.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Any person may make written suggestions or comments on the proposed amendments on or before July 16, 2003. Written comments should be directed to Monica Wnuk, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515) 242-5094, or by electronic mail to Monica.Wnuk@dnr.state.ia.us.

A public hearing will be held on July 15, 2003, at 1 p.m. in Conference Room 4 at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than July 16, 2003.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Monica Wnuk at (515) 281-7212 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Renumber subrule **21.2(3)** as **21.2(4)** and adopt **new** subrule 21.2(3) as follows:

21.2(3) Trial burns for alternative fuels. *An alternative fuel shall be defined as a fuel for which the emissions from combusting the fuel are not known and shall exclude natural gas, coal, liquid propane, and all petroleum distillates.*

a. *Variance from construction permit. Notwithstanding paragraph 21.2(4) "c," the director may grant a variance for the purpose of testing an alternative fuel and quantifying the emissions from the alternative fuel.*

b. *Baseline testing. In addition to submitting the information required in subrule 21.2(1), the applicant may be required to submit baseline emission data for all applicable pollutants as a condition of approval.*

c. *Source testing. Emissions testing deemed necessary for any pollutant may be required as a condition of the variance and shall be conducted in accordance with 567—paragraph 25.1(7) "a."*

21.2(3) (4) Decision.

a. *Granting of variance. The director shall grant a variance when the director concludes that the action is appropriate. The variance may be granted subject to conditions specified by the director. The director shall specify the time intervals as are considered appropriate for submission of reports on the progress attained in the emission reduction program.*

b. *Denial of variance. The director shall deny a variance when the director concludes that the action is appropriate. The applicant may request a review hearing before the commission if the application is denied.*

c. *Variance from any new source performance standards, emission guidelines, national emission standards for hazardous air pollutants, PSD, or a case-by-case MACT are is not allowed. No variance shall be granted to a source to which 567—paragraph 22.1(1) "b," rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), or 567—subrule 23.1(5) applies.*

ITEM 2. Amend subrule **22.1(1)**, paragraph **"b,"** as follows:

b. *New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996 April 5, 2002, unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit*

shall be obtained prior to the initiation of construction or reconstruction of the major source.

ITEM 3. Amend subrule **22.1(2)**, paragraph **"g,"** as follows:

g. *Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for emission reductions, under the prevention of significant deterioration requirements, it must apply for a permit must be obtained for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, the all other conditions of the construction permit remain in effect.*

ITEM 4. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) *New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through August 14, 2001 December 31, 2001, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.*

ITEM 5. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended through August 16, 2001 April 29, 2003, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 Subpart designation is in parentheses. 40 CFR Part 63 Subpart B incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purpose of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a major stationary source as defined in this paragraph. Paragraph 23.1(4) "a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.*

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 6. Amend subrule **23.1(4)**, paragraph **"b,"** introductory paragraph, as follows:

b. Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j). (*40 CFR Part 63, Subpart B*).

ITEM 7. Amend subparagraph **23.1(4)"b"(2)** as follows:

(2) Section 112(j) requirements. The owner or operator of a new or existing major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the U.S. Environmental Protection Agency has failed to promulgate an emission standard within 18 months of the deadline established under CAA 112(d) must submit a MACT application (*Parts 1 and 2*) in accordance with the provisions of *40 CFR 63.52, as amended through April 5, 2002, by the CAA Section 112(j) deadline*. ~~an application for a Title V permit or an application for a significant permit modification or for an administrative amendment, whichever is applicable. The application must be made in accordance with procedures established under Title V, by the Section 112(j) deadline.~~ In addition, the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction, as defined in *40 CFR 63.41, in accordance with the provisions of 567—paragraph 22.1(3) "a."*

ITEM 8. Amend subrule **23.1(4)** by adopting the following new paragraphs **"j," "ax," "bq," "bu," "ca," "ch," "cj," "cn," "cr," "cs," "ct,"** and **"cu"**:

j. Emission standards for hazardous air pollutants for polyvinyl chloride and copolymers production. This standard applies to a polyvinyl chloride (PVC) or copolymer production facility that is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions. (*Part 63, Subpart J*)

ax. Emission standards for ethylene manufacturing process units: heat exchange systems and waste operations. This standard applies to hazardous air pollutants (HAPs) from heat exchange systems and waste streams at new and existing ethylene production units. (*Part 63, Subpart XX*)

bq. Emission standards for hazardous air pollutants for primary copper smelting. This standard applies to a new or existing primary copper smelter that is (or is part of) a major source of hazardous air pollutant (HAP) emissions. (*Part 63, Subpart QQQ*)

bu. Emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units. This standard applies to a new or existing petroleum refinery that is located at a major source of hazardous air pollutants (HAPs) emissions. (*Part 63, Subpart UUU*)

ca. Emission standards for hazardous air pollutants: municipal solid waste landfills. This standard applies to existing and new municipal solid waste (MSW) landfills. (*Part 63, Subpart AAAA*)

ch. Emission standards for hazardous air pollutants for wet-formed fiberglass mat production. This standard applies to wet-formed fiberglass mat production plants that are major sources of hazardous air pollutants. These plants may be stand-alone facilities or located with asphalt roofing and processing facilities. (*Part 63, Subpart HHHH*)

cj. Emission standards for hazardous air pollutants: paper and other web coating. This standard applies to a facility that is engaged in the coating of paper, plastic film, metallic foil, and other web surfaces located at a major source of hazardous air pollutant (HAP) emissions. (*Part 63, Subpart JJJJ*)

cn. Emission standards for hazardous air pollutants: surface coating of large appliances. This standard applies to a facility that applies coatings to large appliance parts or products, and is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAPs). The large appliances source category includes facilities that apply coatings to large appliance parts or products. Large appliances include "white goods" such as ovens, refrigerators, freezers, dishwashers, laundry equipment, trash compactors, water heaters, comfort furnaces, electric heat pumps and most HVAC equipment intended for any application. (*Part 63, Subpart NNNN*)

cr. Emission standards for hazardous air pollutants: surface coating of metal furniture. This standard applies to a metal furniture surface coating facility that is a major source, is located at a major source, or is part of a major source of HAP emissions. A metal furniture surface coating facility is one that applies coatings to metal furniture or components of metal furniture. Metal furniture means furniture or components that are constructed either entirely or partially from metal. (*Part 63, Subpart RRRR*)

cs. Emission standards for hazardous air pollutants: surface coating of metal coil. This standard requires that all new and existing "major" air toxics sources in the metal coil coating industry meet specific emission limits. Metal coil coating is the process of applying a coating (usually protective or decorative) to one or both sides of a continuous strip of sheet metal. Industries using coated metal include: transportation, building products, appliances, can manufacturing, and packaging. Other products using coated metal coil include measuring tapes, ventilation systems for walls and roofs, lighting fixtures, office filing cabinets, cookware, and sign stock material. (*Part 63, Subpart SSSS*)

ct. Emission standards for hazardous air pollutants for leather finishing operations. This standard applies to a new or existing leather finishing operation that is a major source of hazardous air pollutants (HAPs) emissions or that is located at, or is part of, a major source of HAP emissions. In general, a leather finishing operation is a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers. (*Part 63, Subpart TTTT*)

cu. Emission standards for hazardous air pollutants for cellulose products manufacturing. This standard applies to a new or existing cellulose products manufacturing operation that is located at a major source of HAP emissions. Cellulose products manufacturing includes both the miscellaneous viscose processes source category and the cellulose ethers production source category. (*Part 63, Subpart UUUU*)

ITEM 9. Amend subrule **23.1(4)** by adopting the following new paragraphs **"cw," "cx," "dc," "dl," "dm," "dn," "dp," "dq,"** and **"ds"**:

cw. Emission standards for hazardous air pollutants: reinforced plastic composites production. This standard applies to a new or an existing reinforced plastic composites production facility that is located at a major source of HAP emissions. (*Part 63, Subpart WWWW*)

cx. Emission standards for hazardous air pollutants: rubber tire manufacturing. This standard applies to a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions. Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires,

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the production of tire cord, and the application of puncture sealant. (Part 63, Subpart XXXX)

dc. Emission standards for hazardous air pollutants for coke ovens: pushing, quenching, and battery stacks. This standard applies to a new or existing coke oven battery at a plant that is a major source of HAP emissions. (Part 63, Subpart CCCCC)

dl. Emission standards for hazardous air pollutants: asphalt processing and asphalt roofing manufacturing. This standard applies to an existing or new asphalt processing or asphalt roofing manufacturing facility that is a major source of hazardous air pollutants (HAPs) emissions, or is located at, or is part of a major source of HAP emissions. (Part 63, Subpart LLLLL)

dm. Emission standards for hazardous air pollutants: flexible polyurethane foam fabrication operations. This standard applies to a new or existing source at a flexible polyurethane foam fabrication facility. The standard defines two affected sources (units or collections of units to which a given standard or limit applies) corresponding to the two subcategories, loop splitter adhesive use or flame lamination. (Part 63, Subpart MMMMM)

dn. Emission standards for hazardous air pollutants: hydrochloric acid production. This standard applies to a new or existing HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater during its normal operations and is located at, or is part of, a major source of HAP. This does not include HCl production facilities that only occasionally produce liquid HCl product at a concentration of 30 weight percent or greater. (Part 63, Subpart NNNNN)

dp. Emission standards for hazardous air pollutants: engine test cells/stands. This standard applies to an engine test cell/stand that is located at a major source of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile engines. (Part 63, Subpart PPPPP)

dq. Emission standards for hazardous air pollutants for friction materials manufacturing facilities. This standard applies to a new or existing friction materials manufacturing facility that is (or is part of) a major source of hazardous air pollutants (HAPs) emissions. Friction materials manufacturing facilities produce friction materials for use in brake and clutch assemblies. (Part 63, Subpart QQQQQ)

ds. Emission standards for hazardous air pollutants for refractory products manufacturing. This standard applies to a new or existing refractory products manufacturing facility that is, is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart SSSSS)

ITEM 10. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are those specified in the “Compliance Sampling Manual*” adopted by the commission on May 19, 1977, as revised through ~~March 14, 2001~~ *January 30, 2003*. Sampling methods, analytical determinations, minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are those found in Appendices A (as amended through March 12, 1996), B (as amended through September 30, 1999) and F

*Available from department.

(as amended through February 11, 1991) of 40 CFR Part 60, and Appendices A (as amended through July 12, 1999), B (as amended through July 12, 1999), and H (as amended through May 17, 1995) of 40 CFR Part 75.

ARC 2526B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 69, “Onsite Wastewater Treatment and Disposal Systems,” Iowa Administrative Code.

The amendments as proposed will reauthorize NPDES General Permit No. 4 for an additional five years. General Permit No. 4 authorizes discharges from private onsite wastewater systems. In addition to renewing the General Permit, other changes relevant to this permit are proposed and summarized below:

- Definitions for “carbonaceous biochemical oxygen demand (CBOD5),” “Class ‘A’ water,” “Class ‘C’ water,” and “qualified sampler” are added to Chapter 69.
- A “qualified sampler” must conduct effluent sampling for onsite systems.
- The effluent sampling frequency for free access sand filters is increased from once a year to twice a year at six-month intervals.
- The requirement for monitoring effluent for fecal coliform bacteria is replaced with an effluent standard and monitoring requirement for E. coli for systems that discharge to or within one mile upgradient from a Class “A” or Class “C” water.

Any interested person may comment on the proposed amendments on or before July 11, 2003. Written materials should be directed to Brent Parker, Water Supply Section, Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; fax (515)725-0348; E-mail Brent.Parker@dnr.state.ia.us.

As a part of this Notice, the Department is also asking for comments on the draft General Permit No. 4; copies of the draft permit can be obtained by contacting Mr. Parker. In addition, comments are requested on the effluent sampling requirement for total suspended solids (TSS). Some county sanitarians and industry representatives feel that TSS sampling is of limited usefulness and have asked that it be dropped. Others feel that TSS samples are needed to determine the performance of the onsite system and to comply with technology-based effluent standards for waste treatment systems. The amendments as proposed retain the TSS sampling requirement, but comments are requested on whether this requirement is needed to ensure that onsite systems are performing properly and meet relevant effluent standards.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Interested persons are also invited to present oral or written comments at public hearings, which will be held as follows:

July 1, 2003 10 a.m. to 1 p.m.	Delaware County Community Center (Fairgrounds) 200 East Acres Manchester
July 2, 2003 1 to 4 p.m.	Conference Room Atlantic Municipal Utilities 15 West 3rd Atlantic
July 3, 2003 9 a.m. to 12 noon	Arrowhead Area Education Agency (AEA) 824 Flindt Dr. Storm Lake
July 8, 2003 1 to 4 p.m.	IDNR, Wallace Auditorium Wallace State Office Building 502 East 9th St. Des Moines
July 9, 2003 9 a.m. to 12 noon	Helen Wilson Gallery Washington Public Library 120 East Main Washington
July 10, 2003 12 noon to 3 p.m.	North Iowa Area Community College Muse-Norris Conference Center 500 College Dr. Mason City

Persons who intend to attend a public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department and advise of specific needs.

Copies of relevant rules may be obtained from Brent Parker or viewed at the following Web site: <http://www.legis.state.ia.us/Rules/2002/iac/gnac/gna1.pdf>.

These amendments may have an impact on small business. These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrule 64.15(4) as follows:

64.15(4) "Discharge from Onsite Wastewater Treatment and Disposal Systems," NPDES General Permit No. 4, effective July 1, 1998, to July 1, 2003 [insert effective date of rule] to June 30, 2008.

ITEM 2. Amend subrule **69.1(2)** by adopting the following new definitions in alphabetical order:

"Carbonaceous biochemical oxygen demand (CBOD5)" means a five-day measurement of the amount of oxygen used by microorganisms in the biochemical oxidation of organic matter.

"Class 'A' water" means a "primary contact recreation" water, designated by the department for protection for primary contact water recreation (for example, for swimming and water skiing).

"Class 'C' water" means a "drinking water supply" river or lake, designated by the department for protection as a raw water source for a drinking water supply system.

"Qualified sampler," for the purposes of collecting compliance effluent samples required under NPDES General Permit No. 4, means one of the following persons: a county environmental health staff person, an Iowa-certified waste-

water treatment operator, or an individual who has received training approved by the department to conduct effluent sampling. In order to prevent a conflict of interest, a homeowner may not collect compliance effluent samples from the homeowner's own system, and an individual or firm that provides maintenance services for private onsite wastewater systems with a surface discharge may not collect compliance effluent samples from any such systems. The maintenance service firm's owners, employees, or agents shall not engage in compliance effluent sampling if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: the employee, officer or agent; any member of the immediate family of an employee, officer or agent; the partner of an employee, officer or agent; or an organization which employs, or is about to employ, any of the above has financial or other interest in the maintenance service firm.

ITEM 3. Amend rule 567—69.2(455B) as follows:

567—69.2(455B) Requirements when effluent is discharged into surface water. All discharges from onsite wastewater treatment and disposal systems which are discharged into any surface water shall be treated in a manner that will conform with the requirements of NPDES General Permit No. 4 issued by the department of natural resources, as referenced in 567—Chapter 64. Prior to the installation of any system discharging to waters of the state, a notice of intent to be covered by NPDES General Permit No. 4 shall be submitted to the department. Systems covered by this permit must meet all applicable requirements listed in the NPDES permit, *including effluent sampling and monitoring*.

ITEM 4. Amend paragraph **69.9(1)"c"** as follows:

c. Sampling. A sampling port shall be available at the discharge point of the filter or shall be installed in the discharge line. Monitoring and effluent sampling of intermittent sand filters must meet the requirements of the NPDES permit as specified in rule 69.2(455B). Such sampling shall be performed by a qualified sampler annually or as directed by the administrative authority for a subsurface sand filter as described in 69.9(3) and twice a year at six-month intervals for free access sand filters as described in 69.9(4). Tests shall be run on all samples for carbonaceous biochemical oxygen demand (CBOD5) and *Escherichia coli* (*E. coli*) (where applicable), and once a year in the spring for total suspended solids (TSS). The maximum carbonaceous BOD5 CBOD5, total suspended solids TSS, and fecal coliform *E. coli* count requirements limits are as follows: (Fecal coliform *E. coli* tests shall only be required where waste discharge is effluent is discharged directly into a watershed within one mile upstream of or within one mile upgradient of a Class "A" or Class "C" water).

Effluents Discharging To	Fecal Coliform <i>E. coli</i> /100 ml	CBOD5/ mg/L	TSS/ mg/L
Class "A" and Class "C" waters* :	235	25	25
Primary contact water use*	200	25	25
All other water use classifications	no limit	25	25

*A separation distance of 750 feet shall be maintained between any point of discharge and the shoreline of a Class "A" water a primary recreational area as specified in the "Recommended Standards for Bathing Beaches" of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 5. Amend subrule 69.10(6) as follows:

69.10(6) Effluent sampling. Any open discharge from systems involving mechanical aeration shall have the effluent sampled ~~at each inspection~~ *by a qualified sampler twice a year at six-month intervals*. Tests shall be run *twice a year on all samples* for CBOD₅, TSS and coliform bacteria and *E. coli (where applicable), and once a year in the spring for TSS*, as noted in 69.9(1).

ITEM 6. Amend subrule **69.11(1)**, paragraph “c,” as follows:

c. Effluent sampling. Effluent sampling of constructed wetlands shall be performed *by a qualified sampler* twice a year ~~or as directed by the administrative authority~~ *at six-month intervals*. Tests shall be run on all parameters as required in 69.9(1).

ARC 2528B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)“b” for proposed rule making relating to Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Care,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2152B**. The Notice proposed changes to the requirements for supported community living services under the Medicaid home- and community-based mental retardation and brain injury waivers. The proposed amendments:

- Removed provisions for approving conversion of five-bed living units licensed as residential care facilities for the mentally retarded to waiver facilities not required to be licensed, since this authority was rescinded by 2002 Iowa Acts, House File 2416, section 1.
- Set identical standards for approval of living units under the mental retardation and brain injury waivers, including approval of units designed to serve more than four consumers through exceptions to policy.
- Removed the restrictions that no more than eight consumers shall reside in settings with a maximum of four living units and that the majority of living units in larger settings must be occupied by people who are not disabled.
- Clarified that consumers living in licensed health care facilities or in settings required to be licensed as health care facilities under Iowa law are not eligible for supported community living services.

The proposed amendments were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2161B**. The Administrative Rules Review Committee imposed a session delay on the emergency rules. In subsequent emergency rule making, published in the Iowa Administrative Bulletin on February 5, 2003, as **ARC 2257B**, the Department rescinded the rules that constituted Items 3 and 4 of the Notice of Intended Action.

Items 1 and 2 became effective at the end of the legislative session. However, 2003 Iowa Acts, House File 387, restored and expanded the Department’s authority to approve five-bed living units as mental retardation waiver living units not required to be licensed as residential care facilities for the mentally retarded. The Department is adopting amendments to the mental retardation waiver rules in a separate rule making, to be effective July 1, 2003, to conform to these changes.

The amendment to subrule 77.39(13) regarding approval of living units under the brain injury waiver that was Adopted and Filed Emergency and became effective at the end of the legislative session is not changed by the separate rule making and will remain in effect. Therefore, the Department is terminating the rule making commenced in **ARC 2152B**.

ARC 2520B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, “Hospitals,” Iowa Administrative Code.

The proposed amendments are intended to update the Department’s administrative rules by requiring that hospitals develop written policies and procedures regarding mandatory reporting requirements for abuse situations, incorporating recent changes made in the federal certification requirements for organ and tissue requests and procurement, and updating references to the Code of Federal Regulations (CFR) for the purpose of participation in the Medicare program.

Item 1 of the proposed amendments requires that hospitals have written policies and procedures covering all requirements for the mandatory reporting of abuse pursuant to the Iowa Code. Items 2 through 14 clarify rules relating to organ and tissue requests and procurement, determination of death of a donor, determination of medical suitability, informed consent, confidentiality, and the training of hospital personnel. Items 15 and 16 update CFR references for Medicare conditions of participation for critical access hospitals and provide for the acceptance by the Department of hospital inspections performed by the Joint Commission on the Accreditation of Healthcare Organization (JCAHO) or the American Osteopathic Association (AOA).

The proposed amendments were reviewed by the Hospital Licensing Board at its March 5, 2003, meeting and unanimously approved by the members. The proposed amendments also were presented to the State Board of Health for initial review at the Board’s May 14, 2003, meeting. No comments were received from the Board members at that time. The amendments will be presented to the State Board of Health for final review and approval at its July 9, 2003, meeting.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Any interested person may make written suggestions or comments on the proposed amendments on or before July 1, 2003. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.state.ia.us.

Also, there will be a public hearing on Wednesday, July 2, 2003, at 10 a.m. in Conference Room 320 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who intend to attend the public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Inspections and Appeals and advise of specific needs.

These amendments are intended to implement Iowa Code section 10A.104(5) and chapters 135B and 235B.

The following amendments are proposed.

ITEM 1. Amend subrule 51.7(4) as follows:

51.7(4) Child abuse and dependent adult abuse. *Each hospital shall ensure that written policies and procedures cover all requirements for the mandatory reporting of abuse pursuant to the Iowa Code.* Each hospital shall provide that the treatment records of victims of child abuse or dependent adult abuse include a statement that the department of human services protective services was contacted.

ITEM 2. Amend subrule 51.8(1), introductory paragraph, as follows:

51.8(1) Each hospital licensed with Iowa Code chapter 135B shall have in place written policies and protocols for organ and tissue donation. Hospital policies and protocols for organ and tissue donation shall require that the patient, or appropriate person able to consent on behalf of the patient, be made aware of the option to donate as well as of the option to refuse donation and the ability, *if any*, to revoke consent once given.

ITEM 3. Amend paragraphs **51.8(1)“a”** and **“b”** as follows:

a. Hospitals shall be familiar with the uniform anatomical gift law, Iowa Code chapter 142C, and shall develop policies and protocols for consent to organ *and tissue* donation by either the patient or an appropriate person to consent on the patient's behalf consistent with that law's provisions.

b. Hospital policies and protocols for organ and tissue donation shall set forth the responsibilities of the attending physician or physicians, nursing staff, and other appropriate hospital staff persons in the organ donation process. At a minimum, the policies shall set forth who in particular is authorized to make an organ or tissue donor request and that all such requests shall be made only ~~when authorized by the attending physician or~~ in accordance with clearly delineated written protocol approved by the hospital's medical staff and governing board.

ITEM 4. Amend subparagraphs **51.8(1)“d”(1), (2)** and **(4)** as follows:

(1) Where the patient is not medically suitable, *as determined by the organ or tissue procurement organization*;

(2) Where the hospital lacks ~~technical capability and expertise for determining medical suitability and the appropriate facilities or equipment~~ for maintaining the patient or the organs for the time and in the manner necessary to facilitate appropriate procurement of the ~~organ~~ organ(s);

(4) Where the hospital has ~~actual knowledge~~ *appropriate documentation* that the patient or the appropriate person to consent on behalf of the patient does not want to consider the donation option ~~or that donation violates or is otherwise contrary to the religious beliefs of the patient or of the appropriate person to consent on behalf of the patient~~;

ITEM 5. Rescind subparagraph **51.8(1)“d”(5)**.

ITEM 6. Amend paragraphs **51.8(1)“e,” “f”** and **“h”** as follows:

e. Hospital policies and protocols for organ *and tissue* donation shall require documentation in the patient's medical record of the fact that a donor request was made and either accepted or refused, stating to whom the request was made and who accepted or refused; or that a donor request was not made, stating the reason why no request was made; or that a consent previously given was subsequently revoked.

f. Method and manner of consent, where consent to organ or tissue donation has been given, shall be noted in the patient's medical record. Where revocation of consent, *if applicable*, occurs, the manner and method of revocation shall also be noted in the patient's medical record.

h. Hospital policies and protocols for organ *and tissue* donation shall provide for ongoing communication with the patient's family or other appropriate representatives regarding the donation process, the present status of that process and unexpected delays in the process, and family rights and responsibilities following organ or tissue donation.

ITEM 7. Amend paragraph **51.8(2)“c”** as follows:

c. The surgeon performing the organ removal shall not, ~~except in unusual and necessary circumstances~~, participate in the determination of brain death.

ITEM 8. Amend paragraph **51.8(3)“a”** as follows:

a. ~~No~~ *At or near the time of death or when death has occurred*, no organ donor request shall be made until the patient has been determined, *by the designated organ or tissue procurement organization*, to be medically suitable for organ or tissue donation.

ITEM 9. Rescind paragraph **51.8(3)“b.”**

ITEM 10. Amend paragraph **51.8(3)“c”** as follows:

e b. Each hospital shall consult with a recognized organ procurement program or programs in establishing medical requirements for organ and tissue donation and, ~~where necessary~~, in evaluating a particular patient's suitability for donation. Where required by federal law, hospitals shall ~~only~~ work *only* with organ procurement organizations designated by the Department of Health and Human Services (DHHS). Organ procurement programs maintain guidelines for determining medical suitability and generally will provide a hospital with a copy of those guidelines which may be incorporated into the hospital's own policies and protocol for organ donation.

ITEM 11. Amend paragraphs **51.8(4)“b,” “c”** and **“g”** as follows:

b. Hospitals with ~~agreements~~ *an agreement* with ~~one or more OPOs~~ *the designated OPO* shall take into account the terms and conditions of ~~those agreements~~ *the agreement* in developing their policies and protocols. ~~Where required by federal law, hospitals~~ *Hospitals* shall contact only the OPO designated by the federal Department of Health and Human Services.

e. The procurement process shall not occur until necessary consent by the patient or appropriate person to consent on behalf of the patient is received and documented. Also, in

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

cases requiring the involvement of the medical examiner, release of the body must be authorized in writing by the medical examiner and documented in the patient's medical record.

g. Where consent has been given to for organ or tissue donation, *revocation of prior consent, if applicable, shall not be effective once surgical procedures have begun on either the donor or the recipient.* ~~revocation of that consent shall be consistent with the current guidelines set forth by Medicare and Medicaid programs. Revocation of prior consent shall not be effective once surgical procedures have begun on either the donor or the recipient.~~

ITEM 12. Amend subrule 51.8(5) as follows:

51.8(5) Informed consent. Hospital policies and protocols for organ and tissue donation shall be consistent with informed consent provisions of the current guidelines set forth by Medicare and Medicaid programs *provided by the organ procurement organization.*

ITEM 13. Amend subrule 51.8(6) as follows:

51.8(6) Confidentiality. Hospital policies and protocols for organ and tissue donation shall provide that donor and recipient patient-identifying information shall be kept confidential except and only to the extent necessary to assist and complete the procurement and transplant processes process. ~~Hospital confidentiality policies for organ donor and recipient patients shall be consistent with the current guidelines set forth by Medicare and Medicaid programs.~~

ITEM 14. Amend subrule 51.8(7) as follows:

51.8(7) Training of hospital personnel. Hospital policies and protocols for organ and tissue donation shall include provisions for initial and ongoing training of hospital medical, nursing, and other appropriate staff persons regarding the various aspects of the organ *and tissue* donation and procurement process. The type and extent of training will vary from hospital to hospital, based on factors such as likelihood of medically suitable donors, capabilities for maintaining organ donors/patients, referral sources for potential organ *and tissue* donor candidates, and overall participation in organ and tissue procurement and transplants.

ITEM 15. Amend subrule 51.53(5) as follows:

51.53(5) The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as of October 1, 1997 2002.

ITEM 16. Amend rule 481—51.53(135B) by adding a new subrule as follows:

51.53(7) The department shall recognize, in lieu of its own inspection, the comparable inspections and inspections findings of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) if the department is provided with copies of all requested materials relating to the inspections and the inspection process.

ARC 2521B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 58, “Nursing Facilities,” Chapter 60, “Minimum Physical Standards for Residential Care Facilities,” and Chapter 61, “Minimum Physical Standards for Nursing Facilities,” Iowa Administrative Code.

The proposed amendment to Chapter 58 stipulates that nursing facilities cannot require medications dispensed by the Veterans Administration to be repackaged in a drug distribution system compatible with the system used by the facility. The proposed amendments to Chapters 60 and 61 allow for the use of certain surge protectors for consumer electronic devices located in residents’ rooms or elsewhere in facilities.

The proposed amendments were presented to the State Board of Health for initial review at the Board’s May 14, 2003, meeting. No comments were received from the Board members at that time. The amendments will be presented to the State Board of Health for final review and approval at its July 9, 2003, meeting.

Any interested person may make written suggestions or comments on these proposed amendments on or before July 1, 2003. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

Also, there will be a public hearing on July 3, 2003, at 10 a.m. in Conference Room 311 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

The following amendments are proposed.

ITEM 1. Amend rule 481—58.51(135C) as follows:

481—58.51(135C) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

A facility shall not require the repackaging of medications dispensed by the Veterans Administration or an institution operated by the Veterans Administration for the purpose of making the drug distribution system compatible with the system used by the facility. (II)

ITEM 2. Amend subrule **60.12(1)**, paragraph “c,” as follows:

c. Drop cords, extension cords, or any type of flexible cord shall not be used as a substitute for fixed or hard wiring. *Surge protectors may be used for computers and related devices, facsimile, photocopying and scanning machines, and other consumer electronic devices in a resident's room and other locations in a facility provided the surge protector is of metal construction and approved by Underwriters' Laboratories, Inc., or other similarly recognized laboratories. Only fixed supplementary electric heating shall be installed. (III)*

ITEM 3. Amend subrule 61.12(2) as follows:

61.12(2) Drop cords, extension cords, or any type of flexible cord shall not be used as a substitute for fixed or hard wiring. *Surge protectors may be used for computers and related devices, facsimile, photocopying and scanning machines, and other consumer electronic devices in a resident's room and other locations in a facility provided the surge protector is of metal construction and approved by Underwriters' Laboratories, Inc., or other similarly recognized laboratories. Only fixed supplementary electric heating shall be installed. (III)*

ARC 2529B**INSURANCE DIVISION[191]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 30, “Life Insurance Policies,” Iowa Administrative Code.

The proposed amendment authorizes the electronic delivery of group life insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.2(7), and as allowed by the Uniform Electronic Transactions Act, Iowa Code chapter 554D.

A public hearing will be held at 10 a.m. on July 2, 2003, at the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Any person who intends to attend the public hearing and requires special accommodations should contact the Division at (515) 281-5705.

Any interested person may make written comments on the proposed amendment on or before July 3, 2003. Written comments should be sent to Jim Thornton, Attorney, Product and Producer Regulation, at the above address. Comments

may be submitted electronically to jim.thornton@iid.state.ia.us.

This amendment is intended to implement Iowa Code chapter 509.

The following amendment is proposed.

Adopt the following **new** rule:

191—30.8(509) Electronic delivery of group life insurance certificates.

30.8(1) Purpose. The purpose of this rule is to authorize the electronic delivery of group life insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.2(7), and as allowed by the uniform electronic transactions Act, Iowa Code chapter 554D.

30.8(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508 and 515.

30.8(3) Electronic delivery. The insurer and group policyholder will be deemed to comply with the requirements of Iowa Code section 509.2(7) if the group insurance certificate is delivered to the individual plan member electronically and if:

a. The insurer or group policyholder takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of transmitted information by participants, which can be done by:

(1) Using return-receipt electronic mail features.

(2) Periodic reviews or surveys to confirm receipt of the transmitted information.

(3) Any other method approved by the insurance commissioner.

b. The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each participant is provided notice, through electronic means or in writing, apprising the participant that the certificate will be furnished electronically, of the significance of the certificate, and of the participant's right to request and receive, free of charge, a paper copy of the document.

d. Upon request of any participant, the insurer or group policyholder furnishes, free of charge, a paper copy of the group insurance certificate that was delivered to the participant electronically.

30.8(4) Eligible participants. For purposes of subrule 30.8(3), the furnishing of group insurance certificates through electronic means satisfies the requirements of Iowa Code section 509.2(7) only with respect to participants:

a. Who have the ability at their worksite location to effectively access documents furnished in electronic format; and

b. Who have the opportunity at their worksite location to readily convert furnished certificates from electronic form to paper form free of charge.

This rule is intended to implement Iowa Code chapter 509.

ARC 2530B**INSURANCE DIVISION[191]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 35, "Accident and Health Insurance," Iowa Administrative Code.

The proposed amendment authorizes the electronic delivery of accident and health group insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.3(2), and as allowed by the Uniform Electronic Transactions Act, Iowa Code chapter 554D.

A public hearing will be held at 10 a.m. on July 2, 2003, at the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Any person who intends to attend the public hearing and requires special accommodations should contact the Division at (515) 281-5705.

Any interested person may make written comments on the proposed amendment on or before July 3, 2003. Written comments should be sent to Jim Thornton, Attorney, Product and Producer Regulation, at the above address. Comments may be submitted electronically to jim.thornton@iid.state.ia.us.

This amendment is intended to implement Iowa Code chapter 509.

The following amendment is proposed.

Adopt the following **new** rule:

191—35.8(509) Electronic delivery of accident and health group insurance certificates.

35.8(1) Purpose. The purpose of this rule is to authorize the electronic delivery of accident and health group insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.3(2), and as allowed by the uniform electronic transactions Act, Iowa Code chapter 554D.

35.8(2) Scope. This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508 and 515.

35.8(3) Electronic delivery. The insurer and group policyholder will be deemed to comply with the requirements of Iowa Code section 509.3(2) if the group insurance certificate is delivered to the individual plan member electronically and if:

a. The insurer or group policyholder takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of

transmitted information by participants, which can be done by:

(1) Using return-receipt electronic mail features.
(2) Periodic reviews or surveys to confirm receipt of the transmitted information.

(3) Any other method approved by the insurance commissioner.

b. The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each participant is provided notice, through electronic means or in writing, apprising the participant that the certificate will be furnished electronically, of the significance of the certificate, and of the participant's right to request and receive, free of charge, a paper copy of the document.

d. Upon request of any participant, the insurer or group policyholder furnishes, free of charge, a paper copy of the group insurance certificate that was delivered to the participant electronically.

35.8(4) Eligible participants. For purposes of subrule 35.8(3), the furnishing of group insurance certificates through electronic means satisfies the requirements of Iowa Code section 509.3(2) only with respect to participants:

a. Who have the ability at their worksite location to effectively access documents furnished in electronic format; and

b. Who have the opportunity at their worksite location to readily convert furnished certificates from electronic form to paper form free of charge.

This rule is intended to implement Iowa Code chapter 509.

ARC 2514B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners hereby gives Notice of Intended Action to amend Chapter 279, "Administrative and Regulatory Authority for the Board of Social Work Examiners"; amend Chapter 280, "Licensure of Social Workers"; rescind Chapter 282, "Discipline for Social Workers," and adopt new Chapter 282, "Practice of Social Workers"; and renumber Chapter 283, "Fees," as Chapter 284 and adopt new Chapter 283, "Discipline for Social Workers," Iowa Administrative Code.

The proposed amendments adopt new subrules for the conduct of persons who attend public meetings, requirements for notifying the Board of a name or address change, and criteria for obtaining a duplicate license. The proposed amendments also adopt new practice and discipline chapters. The discipline chapter contains standard language which will be used by all boards regulated by the Division of Professional Licensure.

The Division sent a draft of the proposed amendments to selected licensees and associations. Staff and Board members also provided input on the proposed rules.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Any interested person may make written comments on the proposed amendments no later than July 1, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail ebaird@idph.state.ia.us.

A public hearing will be held on July 1, 2003, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 279.4(2) and 279.4(3) as follows:

279.4(2) Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's current mailing address within 30 days after the change of address occurs.

279.4(3) Notice of change of name. Each licensee shall notify the board *in writing* of ~~any a~~ change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend rule 645—279.6(17A), parenthetical implementation, as follows:
645—279.6(17A 21)

ITEM 3. Adopt **new** subrules 279.6(3) and 279.6(4) as follows:

279.6(3) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

279.6(4) Cameras and recording devices may be used at open meetings, provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 279** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 154C and 272C.

ITEM 5. Renumber rule **645—280.12(17A,147,272C)** as **645—280.13(17A,147,272C)** and adopt the following **new** rule:

645—280.12(272C) Duplicate certificate or renewal card.

280.12(1) A duplicate renewal card or duplicate certificate shall be required if the current renewal card or certificate is lost, stolen or destroyed. A duplicate renewal card or duplicate certificate shall only be issued for such circumstances.

280.12(2) A duplicate renewal card or certificate shall be issued upon receipt of a written request from the licensee and receipt of the fee as specified in rule 645—284.1(147,154C).

280.12(3) If the board is notified by the licensee that the renewal card or certificate has not been received within 60 days after being mailed by the board, no fee shall be required to issue a duplicate renewal card or certificate.

ITEM 6. Rescind 645—Chapter 282 and adopt the following **new** chapter in lieu thereof:

CHAPTER 282

PRACTICE OF SOCIAL WORKERS

645—282.1(154C) Definitions.

"Client" means the individual, couple, family, or group to whom a licensee provides direct social work services.

"Clinical services" means services provided by an LMSW or LISW which involve the professional application of social work theory and methods in diagnosing, assessing, treating, and preventing psychosocial disabilities or impairments, including emotional and mental disorders.

"Counseling" means a method used by licensees to assist clients in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

"Psychosocial therapy" means a specialized, formal interaction between an LMSW or LISW and a client in which a therapeutic relationship is established and maintained to assist the client in overcoming or abating specific emotional, mental, or social problems and achieving specified goals for well-being. Psychosocial therapy is a form of psychotherapy which emphasizes the interface between the client and the client's environment. Therapy is a planned, structured program based on a diagnosis and is directed to accomplish measurable goals and objectives specified in the client's individual treatment plan.

645—282.2(154C) Rules of conduct.**282.2(1) Informed consent.**

a. A licensee shall provide services to clients only in the context of a professional relationship based, when appropriate, on valid written informed consent. A licensee shall use clear and understandable language to inform clients of the proposed services, purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, a client's right to refuse or withdraw consent, and the time frame covered by the consent.

b. If a client is not literate or has difficulty understanding the primary language used in the practice setting, a licensee shall attempt to ensure the client's comprehension. This may include providing the client with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.

c. If a client lacks the capacity to provide informed consent, a licensee shall protect the client's interests by seeking permission from an appropriate third party and shall inform the client consistent with the client's level of understanding. In such instances, a licensee shall seek to ensure that the third party acts in a manner consistent with the client's wishes and interests. A licensee shall take reasonable steps to enhance the client's ability to give informed consent.

d. If a client is receiving services involuntarily, a licensee shall provide information about the nature and extent of services and about the extent of the client's right to refuse services.

e. The provision of social work services to an individual in this state through any electronic means, including the Internet, telephone, or the Iowa Communications Network or any fiber optic media, regardless of the location of the licensee, shall constitute the practice of social work in the state of Iowa and shall be subject to regulation in accordance with Iowa Code chapters 147 and 154C and the administrative rules of the board. A licensee who provides services via elec-

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tronic media shall inform recipients of the limitations and risks associated with such services.

f. A licensee shall obtain a client's informed consent before audiotaping or videotaping the client or permitting a third party to observe services provided to the client.

282.2(2) Competence.

a. A licensee shall provide services and represent oneself as competent only within the boundaries of the licensee's education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

b. A licensee shall provide services in substantive areas or use intervention techniques or approaches that are new only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those areas, interventions or techniques.

c. When generally recognized standards do not exist with respect to an emerging area of practice, a licensee shall exercise careful judgment and take responsible steps, including appropriate education, research, training, consultation and supervision, to ensure competence and to protect clients from harm.

282.2(3) Supervision.

a. A licensee shall exercise appropriate supervision over persons who practice under the supervision of the licensee.

b. A licensee who provides supervision or consultation shall have the necessary knowledge and skill to supervise or consult appropriately and shall do so only within the licensee's areas of knowledge and competence.

c. A licensee who provides supervision or consultation is responsible for setting clear, appropriate, and culturally sensitive boundaries.

d. A licensee shall not engage in any dual or multiple relationships with supervisees if there is a risk of exploitation or of potential harm to the supervisee.

e. A licensee shall not engage in sexual activities or sexual contact with a supervisee, student, trainee, or other colleague over whom the licensee exercises professional or supervisory authority.

f. A licensee shall not employ, assign, or supervise an individual in the performance of services that require a license if the individual has not received a license to perform the services or if the individual has a suspended, revoked, lapsed, or inactive license.

g. A licensee shall not practice without receiving supervision, as needed, given the licensee's level of practice, experience, and need.

282.2(4) Privacy and confidentiality.

a. A licensee shall not disclose or be compelled to disclose client information unless required by law, except under the following limited circumstances:

(1) If the information reveals the contemplation or commission of a crime. This includes situations in which the licensee determines that disclosure is necessary to prevent serious, foreseeable, and imminent harm to the client or another specific identifiable person.

(2) If the client waives the privilege by bringing criminal, civil, or administrative charges or action against a licensee.

(3) With the written informed consent of the client that explains to whom the client information will be disclosed or released and the purpose and time frame for the release of information. If the client is deceased or unable to provide informed consent, a licensee shall obtain written consent from the client's personal representative, another person authorized to sue, or the beneficiary of an insurance policy on the client's life, health, or physical condition.

(4) To testify in a court or administrative hearing concerning matters pertaining to the welfare of children.

(5) To seek collaboration or consultation with professional colleagues or administrative superiors on behalf of the client.

(6) Pursuant to a validly issued subpoena or court order.

In the event of a disclosure of information under any of the circumstances stated above, the licensee shall disclose the least amount of confidential information necessary and shall reveal only that information that is directly relevant to the purpose for which the disclosure is made.

b. Before the disclosure is made, a licensee shall inform a client, to the extent possible, about the disclosure of confidential information and the potential consequences of the disclosure. This requirement applies whether a licensee discloses confidential information on the basis of client consent or other legal basis.

c. A licensee shall discuss with clients and other interested parties the nature of confidentiality and limitations of a client's right to confidentiality. A licensee shall review with clients the circumstances under which confidential information may be requested and when disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

d. When a licensee provides counseling or psychosocial therapy services to families, couples, or groups, the licensee shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. A licensee shall inform participants in family, couples, or group counseling or psychosocial therapy that the licensee cannot guarantee that all participants will honor such agreements.

e. A licensee shall inform clients involved in family, couples, marital, or group counseling or psychosocial therapy of the licensee's, the licensee's employer, and agency's policy concerning the licensee's disclosure of confidential information among the parties involved in the counseling or therapy.

f. A licensee shall not disclose confidential information to third-party payers unless a client has authorized such disclosure. A licensee shall inform the client of the nature of the client information to be disclosed or released to the third-party payer.

g. A licensee shall not discuss confidential information in any setting unless privacy can be ensured. A licensee shall not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.

h. A licensee shall protect the confidentiality of clients during legal proceedings to the extent permitted by law.

i. A licensee shall protect the confidentiality of clients when responding to requests from members of the media.

j. A licensee shall protect the confidentiality of clients' written and electronic records and other sensitive information. A licensee shall take reasonable steps to ensure that client records are stored in a secure location and that client records are not available to others who are not authorized to have access.

k. A licensee shall take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones, telephone answering machines, and other electronic or computer technology.

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l. A licensee shall transfer or dispose of client records in a manner that protects client confidentiality and is consistent with federal and state statutes, rules, and regulations and the guidelines of the licensee's employer or agency, if applicable.

m. A licensee shall take reasonable precautions to protect client confidentiality in the event of the licensee's termination of practice, incapacitation, or death.

n. A licensee shall not disclose identifying information when discussing a client for teaching or training purposes or in public presentations unless the client has consented to disclosure of confidential information.

o. A licensee shall not disclose identifying information when discussing a client with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.

p. Consistent with the preceding standards, a licensee shall protect the confidentiality of deceased clients.

282.2(5) Record keeping.

a. A licensee shall maintain sufficient, timely, and accurate documentation in client records. A licensee's records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

b. A licensee who provides clinical services in any employment setting, including private practice, shall maintain timely records that include subjective and objective data, assessment or diagnosis, a treatment plan, and any revisions to the assessment, diagnosis, or plan made during the course of treatment.

c. A licensee who provides clinical services shall store records in accordance with state and federal statutes, rules, and regulations governing record retention and with the guidelines of the licensee's employer or agency, if applicable. If no other legal provisions govern record retention, a licensee shall store all client records for a minimum of seven years following the termination of services to ensure reasonable future access.

282.2(6) Access to records. A licensee who provides clinical services shall:

a. Provide the client with reasonable access to records concerning the client. A licensee who is concerned that a client's access to the client's records could cause serious misunderstanding or harm to the client shall provide assistance in interpreting the records and consultation with the client regarding the records. A licensee may limit a client's access to the client's records, or portions of the records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both the client's request and the rationale for withholding some or all of a record should be documented in the client's records.

b. Take steps to protect the confidentiality of other individuals identified or discussed in any records to which a client is provided access.

282.2(7) Billing and fees.

a. A licensee shall bill only for services which have been provided.

b. A licensee shall not accept goods or services from the client or a third party in exchange for the licensee's services.

c. A licensee shall not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the licensee's employer or agency.

d. A licensee shall not accept, give, offer or solicit a fee, commission, rebate, fee split, or other form of consideration for the referral of a client.

e. A licensee shall not permit any person to share in the fees for professional services, other than a partner, employee, an associate in a professional firm, or a consultant to the licensee.

f. A licensee who provides clinical services shall, when appropriate:

(1) Establish and maintain billing practices that accurately reflect the nature and extent of services provided.

(2) Inform the client of the fee at the initial session or meeting with the client. A licensee shall provide a written payment arrangement to a client at the commencement of the professional relationship.

(3) Ensure that the fees are fair, reasonable, and commensurate with the services performed.

282.2(8) Dual relationships and conflicts of interest.

a. "Dual relationship" means that a licensee develops or assumes a secondary role with a client, including but not limited to a social relationship or business association. For purposes of these rules, "dual relationship" does not include a sexual relationship. Standards governing sexual relationships are found in subrule 282.2(9).

(1) Current clients. A licensee shall not engage in a dual relationship with a client.

(2) Former clients. A licensee shall not engage in a dual relationship with a client within five years of the termination of the client relationship. A licensee shall not engage in a dual relationship with a former client, regardless of the length of time elapsed since termination of the client relationship, when there is a risk of exploitation or potential harm to a client or former client.

(3) Unavoidable dual relationships with current and former clients. If a dual relationship with a current or former client is unavoidable, the licensee shall take steps to protect the client and shall be responsible for setting clear, appropriate, and culturally sensitive boundaries. The burden shall be on the licensee to show that the dual relationship was unavoidable. In determining whether a dual relationship was unavoidable, the board shall consider the size of the community, the nature of the relationship, and the risk of exploitation or harm to a client or former client.

b. Conflicts of interest.

(1) A licensee shall avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment.

(2) A licensee shall not continue in a professional relationship with a client when the licensee has become emotionally involved with the client to the extent that objectivity is no longer possible in providing the required professional services.

(3) A licensee shall inform the client when a real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the client's interests primary and protects the client's interests to the greatest extent possible. In some cases, protecting the client's interests may require termination of the professional relationship with proper referral of the client.

(4) A licensee shall not take unfair advantage of any professional relationship or exploit others to further the licensee's personal, religious, political, or business interests.

(5) A licensee who provides services to two or more people who have a relationship with each other shall clarify with all parties, when appropriate and in a manner consistent with the confidentiality standards of subrule 282.2(4), which individuals will be considered clients and the nature of the licensee's professional obligations to the various individuals who are receiving services. A licensee who anticipates a

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conflict of interest among the individuals receiving services or who anticipates having to perform in potentially conflicting roles shall clarify, when appropriate and in a manner consistent with the confidentiality standards at subrule 282.2(4), the licensee's role with the parties involved and take appropriate action to minimize any conflict of interest.

282.2(9) Sexual relationships.

a. Current clients. A licensee shall not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee shall not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee shall not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee shall not provide clinical services to an individual with whom the licensee has had prior sexual contact.

282.2(10) Physical contact. A licensee shall not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries which govern such contact.

282.2(11) Termination of services.

a. A licensee shall terminate services to a client when such service is no longer required or no longer serves the client's needs or interests.

b. A licensee shall take reasonable steps to avoid abandoning clients who are still in need of services. A licensee shall assist in making appropriate arrangements for continuation of services when necessary.

c. A licensee shall not terminate services to pursue a social, financial, business, romantic, or sexual relationship with a client.

d. A licensee who anticipates the termination or interruption of services to a client shall notify the client promptly and seek the transfer, referral, or continuation of services in relation to the client's needs and preferences.

e. A licensee who is leaving an employment setting shall inform clients, to the extent possible given the nature of the termination of the employment relationship, of appropriate options for the continuation of services and of the benefits and risks of the options.

f. If the employer who terminates a licensee is also a licensee, the employer shall provide notice to clients or allow the licensee the opportunity to provide notice to clients to ensure appropriate case closure or continuation or transfer of services if continued treatment is necessary.

g. A licensee who provides clinical services shall comply with the following additional standards regarding termination of the client relationship:

(1) Termination of a client relationship shall be documented in the client record. Absent written documentation of

termination, the professional relationship shall be considered ongoing.

(2) A licensee who practices in a fee-for-service setting may terminate services to a client who is not paying an overdue balance only if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client. Prior to terminating services under this subrule, a licensee shall make reasonable efforts to collect the unpaid fees and shall make appropriate referrals for the client.

282.2(12) Misrepresentations, disclosure. A licensee shall not:

a. Knowingly make a materially false statement, or fail to disclose a relevant material fact, in a letter of reference, application, referral, report or other document.

b. Knowingly allow another person to use the licensee's license or credentials.

c. Knowingly aid or abet a person who is misrepresenting the person's professional credentials or competencies.

d. Impersonate another person or misrepresent an organizational affiliation in one's professional practice.

e. Further the application or make a recommendation for professional licensure of another person who is known by the licensee to be unqualified in respect to character, education, experience, or other relevant attribute.

f. Fail to notify the appropriate licensing authority of any human services professional who is practicing or teaching in violation of the laws or rules governing that person's professional discipline.

g. Engage in professional activities, including advertising, involving dishonesty, fraud, deceit, or misrepresentation.

h. Advertise services in a false or misleading manner or fail to indicate in the advertisement the name, the highest relevant degree and licensure status of the provider of services.

i. Fail to distinguish, or purposely mislead the reader or listener in public announcements, addresses, letters and reports as to whether the statements are made as a private individual or whether they are made on behalf of an employer or organization.

j. Engage in direct solicitation of potential clients for pecuniary gain in a manner or in circumstances which constitute overreacting, undue influence, misrepresentation or invasion of privacy.

k. Fail to inform each client of any financial interests that might accrue to the licensee for referral to any other person or organization or for the use of tests, books, or apparatus.

l. Fail to inform each client that the client may be entitled to the same services from a public agency, if the licensee is employed by that public agency and also offers services privately.

m. Make claims of professional superiority which cannot be substantiated by the licensee.

n. Guarantee that satisfaction or a cure will result from the performance of professional services.

o. Claim or use any secret or special method of treatment or techniques which the licensee refuses to divulge to professional colleagues.

p. Take credit for work not personally performed whether by giving inaccurate information or failing to give accurate information.

q. Offer social work services or use the designation of licensed bachelor social worker, licensed master social work-

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er, or licensed independent social worker; or use the designations LBSW, LMSW, or LISW or any other designation indicating licensure status; or hold oneself out as practicing at a certain level of licensure unless the licensee is duly licensed as such.

r. Permit another person to use the licensee's license for any purpose.

s. Practice outside the scope of a license.

282.2(13) Impairments.

a. A licensee shall not:

(1) Practice in a professional relationship while intoxicated or under the influence of alcohol or drugs not prescribed by a licensed physician.

(2) Practice in a professional relationship while experiencing a mental or physical impairment that adversely affects the ability of the licensee to perform professional duties in a competent and safe manner.

(3) Practice in a professional relationship if involuntarily committed for treatment of mental illness, drug addiction, or alcoholism.

b. A licensee who self-reports an impairment or suspected impairment to the board may be eligible for confidential monitoring by the impaired practitioner review committee. The licensee shall be provided the Impaired Practitioner Report form to initiate the process. Standards governing the impaired practitioner review committee may be found in 641—Chapter 193.

282.2(14) Research. If engaged in research, a licensee shall:

a. Consider carefully the possible consequences for human beings participating in the research.

b. Protect each participant from unwarranted physical and mental harm.

c. Ensure that the consent of the participant is voluntary and informed and that each participant executes a signed informed consent form which details the nature of the research and any known possible consequences.

d. Treat information obtained as confidential.

e. Not knowingly report distorted, erroneous, or misleading information.

282.2(15) Organization relationships and business practices. A licensee shall not:

a. Solicit the clients of colleagues or assume professional responsibility for clients of another agency or colleague without appropriate communication with that agency or colleague.

b. Abandon an agency, organization, institution, or group practice without reasonable notice or under circumstances which seriously impair the delivery of professional care to clients.

c. Deliberately falsify client records.

d. Fail to submit required reports and documents in a timely fashion to the extent that the well-being of the client is adversely affected.

e. Delegate professional responsibilities to a person when the licensee knows, or has reason to know, that the person is not qualified by training, education, experience, or classification to perform the requested duties.

282.2(16) Discrimination and sexual harassment.

a. A licensee shall not practice, condone, or facilitate discrimination against a client, student, or supervisee on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability, diagnosis, or social or economic status.

b. A licensee shall not sexually harass a client, student, or supervisee. Sexual harassment includes sexual advances,

sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

282.2(17) General. A licensee shall not:

a. Practice without receiving supervision as needed, given the licensee's level of practice, experience, and need.

b. Practice a professional discipline without an appropriate license or after expiration of the required license.

c. Physically or verbally abuse a client or colleague.

d. Obtain, possess, or attempt to obtain or possess a controlled substance without lawful authority; or sell, prescribe, give away, or administer controlled substances.

282.2(18) Relationship between the rules of conduct and the National Association of Social Workers (NASW) Code of Ethics. The NASW Code of Ethics is one resource for practitioners with respect to practice and ethical issues, and selected sections from the NASW Code of Ethics have been incorporated into the rules of conduct. A licensee's professional conduct is governed by the board's rules of conduct, and a licensee may be disciplined for violation of these rules.

These rules are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

ITEM 7. Renumber **645—Chapter 283** as **645—Chapter 284** and adopt the following new chapter:

CHAPTER 283

DISCIPLINE FOR SOCIAL WORKERS

645—283.1(154B) Definitions.

"Board" means the board of social work examiners.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice social work.

645—283.2(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—283.3(272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

283.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to:

a. An intentional perversion of the truth in making application for a license to practice in this state;

b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

283.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other social workers in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average social worker acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of licensed social workers in this state.

283.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of social

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work or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

283.2(4) Practice outside the scope of the profession.

283.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

283.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

283.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

283.2(8) Falsification of client records.

283.2(9) Acceptance of any fee by fraud or misrepresentation.

283.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the licensee's ability to safely and skillfully practice the profession.

283.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice social work. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

283.2(12) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of social work, including but not limited to, the rules of conduct found in 645—282.2(154C).

283.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report such action in writing within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

283.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of social work in another state, district, territory or country.

283.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

283.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

283.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

283.2(18) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

283.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

283.2(20) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

283.2(21) Failure to pay costs assessed in any disciplinary action.

283.2(22) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

283.2(23) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

283.2(24) Knowingly aiding, assisting or advising a person to unlawfully practice social work.

283.2(25) Failure to report a change of name or address within 30 days after it occurs.

283.2(26) Representing oneself as a licensed social worker when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

283.2(27) Permitting another person to use the licensee's license for any purpose.

283.2(28) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

283.2(29) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a client or coworker.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

283.2(30) Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

645—283.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.

2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.

4. Probation.

5. Require additional education or training.

6. Require a reexamination.

7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.

8. Impose civil penalties not to exceed \$1000.

9. Issue a citation and warning.

10. Such other sanctions allowed by law as may be appropriate.

645—283.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

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1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 154C and 272C.

SECRETARY OF STATE

Publication to Facilitate Public Comment and Review

Section 256 of the Help America Vote Act of 2002 (Pub. L. 107-252) [HAVA] requires each state to develop a plan for implementation of the Act. Prior to submission of the plan to the federal Election Assistance Commission, each state must make a preliminary plan available to the public and allow for at least 30 days of public comment. Pursuant to HAVA section 255(a), the chief state election official (the Secretary of State as designated in Iowa Code section 47.1) has appointed an advisory committee that has prepared a preliminary plan in accordance with Pub. L. 107-252, Section 253(b).

The preliminary plan is available for public review and comment from the Secretary of State, State Capitol, Des Moines, Iowa, by telephone (515)281-8993 or 1-888-SOS-VOTE, Internet www.sos.state.ia.us, or E-mail sos@sos.state.ia.us.

Public comments on the plan will be accepted by the Secretary of State through 5 p.m. on July 15, 2003. Comments may be submitted to Joni Klaassen, Deputy Secretary of State, State Capitol, Room 105, Des Moines, Iowa 50319. Comments may also be submitted via E-mail to sos@sos.state.ia.us.

Public meetings to allow for additional comments will be held in the following locations at 7 p.m.

June 5 Creston	Southwestern Community College Circular Bldg., Rm. 221 1501 West Townline
June 10 West Des Moines	WDSM Learning Resource Center Community Room 3550 Geo. Mills Civic Parkway
June 11 Knoxville	Knoxville Public Library 213 E. Montgomery St.
June 17 Sioux City	Sioux City Public Library 529 Pierce St.
June 18 Neola	Neola Senior Center 102 Third St.
June 25 Waterloo	Waterloo Public Library 415 Commercial St.

June 26 Spencer	Clay County Administration Bldg. 300 West 4th St.
July 1 Burlington	Burlington Memorial Auditorium Mtg. Rm. A 200 Front St.
July 8 Dubuque	St. Mark Community Center 1201 Locust St.
July 9 Davenport	Bicentennial Bldg. 6th Fl. Conf. Rm. 428 Western Ave.
July 10 Cedar Rapids	Linn Co. Admin. Office Bldg. County Supervisor's Mtg. Rm. 1st Floor 930 1st St. SW
July 14 Mason City	Music Man Square Reunion Rm. 308 S. Pennsylvania Ave.
July 15 Fort Dodge	Webster Co. Courthouse 1st Floor Conference Rm. 701 Central Ave.

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SECRETARY OF STATE[721]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby gives Notice of Intended Action to adopt Chapter 25, "Election Administration—Administrative Complaint Procedure," Iowa Administrative Code.

The purpose of Chapter 25 is to set forth an administrative complaint procedure to comply with Title IV, Section 402, of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15512. The procedure shall be available to any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15481-15485, has occurred, is occurring, or is about to occur in connection with a federal election.

Any interested persons may make written comments or suggestions on this proposed amendment by 4:30 p.m. on July 1, 2003. Such written materials should be directed to Joni Klaassen, Deputy Secretary of State, State Capitol, Room 105, Des Moines, Iowa 50319. E-mail comments may be sent to sos@sos.state.ia.us.

Waiver provisions are included where allowed by Iowa Code chapter 17A.

A fiscal impact statement is not required as the anticipated costs do not meet the amount set forth in Iowa Code section 25B.6.

This amendment is intended to implement Public Law 107-252 Section 402(a)(1) and 42 U.S.C. 15512(a)(1).

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The following **new** chapter is proposed.

CHAPTER 25

ELECTION ADMINISTRATION—ADMINISTRATIVE COMPLAINT PROCEDURE

721—25.1(17A,39A,47) General provisions.

25.1(1) Scope of jurisdiction. The administrative complaint procedure set forth in this chapter is established to comply with Title IV, Section 402, of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15512. The procedure is available to any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15481-15485, has occurred, is occurring, or is about to occur in connection with a federal election.

25.1(2) Timely resolution. A final determination with respect to a complaint shall be issued within 90 days of the date the complaint is filed with the state commissioner of elections, unless the complainant consents to a longer period for making such determination. If a determination is not issued within this 90-day period and the complainant does not agree to allow a longer period for making the determination, the complaint shall be resolved within 60 days pursuant to the alternate dispute resolution procedure established in rule 721—25.34(17A).

25.1(3) Definitions. For purposes of this chapter, the following terms shall have the following meanings:

“Complainant” means the person who files a complaint under this chapter.

“Federal election” means a primary or general election at which a federal office appears on the ballot.

“Party” means the complainant, respondent, and any other person or persons allowed by the presiding officer to intervene in pending complaint proceedings.

“Presiding officer” means the state commissioner of elections or an alternate decision maker designated pursuant to rule 721—25.7(17A,39A,47).

“Respondent” means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.

“State or local election official” means the state commissioner of elections, any county commissioner of elections, or any person employed or appointed by either the state commissioner of elections or a county commissioner of elections whose responsibilities include or directly relate to the administration of any federal election.

“Title III” means Title III of the Help America Vote Act of 2002, Public Law 107-252, codified at 42 United States Code 15481-15485.

721—25.2(17A,39A,47) Form of complaint. This complaint procedure is limited to allegations of violations of Title III in a federal election. Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local election official may file a complaint under this chapter. The complainant may either submit a complaint on a form provided by the state commissioner of elections or in any other form that complies with this rule. All complaints shall be in writing, signed and notarized, and be sworn under oath. The complaint must identify the complainant by name and mailing address and include a clear and concise description of the alleged violation that is sufficiently detailed to apprise both the respondent and the presiding officer of the nature of the alleged violation. The complainant shall provide copies of any written documentation supporting the allega-

tions set forth in the complaint as attachments to the complaint.

721—25.3(17A,39A,47) Filing, service, and initial review of complaint.

25.3(1) Filing. The complaint shall be filed with the state commissioner of elections and shall be accompanied by adequate proof of service of the complaint, as required by subrule 25.3(2).

25.3(2) Service. Service of a complaint upon each respondent shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the respondent or the respondent's duly authorized legal representative.

25.3(3) Initial review of complaint.

a. The director of elections within the office of the state commissioner of elections shall examine each complaint to determine whether it falls within the jurisdiction of these rules and may reject it if:

- (1) It is not signed, notarized, or sworn under oath;
- (2) It does not identify the complainant or include an adequate mailing address;
- (3) It does not, on its face, allege a violation of Title III with regard to a federal election; or
- (4) More than 90 days have elapsed since the final certification of the results of the federal election at issue.

b. A determination as to jurisdiction shall be made within five business days of the date of filing of the complaint.

c. If the complaint is rejected, the director shall issue a written statement specifying the reasons for the rejection and provide copies of the statement to the complainant and all respondents by regular mail.

d. If the complaint is accepted, the complaint and any accompanying documentation shall be forwarded to the presiding officer for further action in accordance with these rules.

721—25.4(17A,39A,47) Notice of proceedings. Upon receipt of a complaint from the director of elections, the presiding officer shall establish a schedule under which the complainant and respondent(s), as well as any other interested persons, may file any written submissions or documentary evidence concerning the complaint and under which a hearing on the complaint will be conducted, if requested. The presiding officer shall serve notice of the proceeding upon the complainant and the respondent(s). The notice shall include:

1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
2. A reference to the particular section or sections of Title III which are involved;
3. A reference to the procedural rules governing conduct of the proceeding;
4. A short and plain statement of the matters asserted in the complaint;
5. Identification of all parties or known representatives of parties;
6. The deadline for submission of an answer by the respondent(s) or written documentation by any interested persons;
7. The deadline by which either party may request an evidentiary hearing; and
8. Any other information deemed appropriate.

721—25.5(17A,39A,47) Informal settlement. The presiding officer, or a designated staff member, may attempt to informally settle a complaint proceeding before or after a notice of the proceeding is issued. If a staff member is designated to initiate settlement discussions, the designee shall have authority to negotiate on behalf of the presiding officer, but shall

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not have authority to bind the presiding officer to particular terms of settlement. If the presiding officer and respondent(s) agree to settlement of a pending complaint, a consent order shall be issued. By electing to sign a consent order, the respondent(s) waives all rights to a hearing and all attendant procedures. The consent order shall have the force and effect of a final order of the presiding officer and shall be served and published as provided in rule 721—25.28(17A).

721—25.6(17A,39A,47) Answer.

25.6(1) Within ten days of the date of service of notice of the proceedings, each respondent shall file an answer to the allegations contained therein and serve a copy of the answer upon all parties to the proceedings, pursuant to rule 721—25.16(17A,39A,47).

25.6(2) The answer shall contain the following information:

- a. The full name, address and telephone number of the respondent and the respondent's counsel, if any; and
- b. A specific statement admitting or denying each allegation in the complaint.

25.6(3) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the proceeding, including explanations, remarks or statements of mitigating circumstances, and any relevant documentation.

721—25.7(17A,39A,47) Presiding officer.

25.7(1) In complaint proceedings in which all of the respondents are local election officials, the presiding officer shall be the state commissioner of elections.

25.7(2) In complaint proceedings in which one of the respondents is the state commissioner of elections or a person or persons employed or appointed by the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission appointed pursuant to Iowa Code section 47.8, except the state commissioner of elections or the state commissioner's designee.

25.7(3) Any party to a complaint proceeding who wishes to request that the presiding officer be an administrative law judge employed by the department of inspections and appeals must file a written request within five days after service of a notice of proceedings which identifies the presiding officer as the state commissioner of elections or voter registration commission. The state commissioner of elections or voter registration commission may deny the request only upon a finding that one or more of the following apply:

- a. The presiding officer under whose authority the proceeding is to take place is not a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. The proceeding involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to assist the presiding officer in resolving disputed factual issues.
- e. The request was not timely filed.
- f. The request is not consistent with a specified statute.

25.7(4) The originally designated presiding officer shall issue a written ruling specifying the grounds for the ruling within ten days after a request for an administrative law judge is filed. If the request is granted, the administrative law judge assigned to act as presiding officer and issue a proposed deci-

sion shall have a J.D. degree, unless waived by the originally designated presiding officer.

25.7(5) The state commissioner of elections or voter registration commission, when acting as presiding officer, may request that an administrative law judge perform certain functions as an aid to the presiding officer, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the state commissioner of elections or voter registration commission.

25.7(6) All rulings by an administrative law judge whether the judge is acting as presiding officer or assistant to the state commissioner or voter registration commission are subject to appeal to the originally designated presiding officer pursuant to rules 721—25.29(17A) and 25.30(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies.

25.7(7) Unless otherwise provided by law, the state commissioner or voter registration commission, when reviewing a proposed decision of an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

721—25.8(17A,39A,47) Proceedings based upon written submissions.

25.8(1) In order to expedite resolution of complaint proceedings, complaints shall be evaluated and a decision rendered based upon written submissions unless the complainant or respondent requests a hearing on the record or the presiding officer determines that an evidentiary hearing will assist in resolution of outstanding factual disputes.

25.8(2) The presiding officer will not issue a decision upon the written submissions prior to the expiration of the time within which the complainant and respondent may request a hearing on the record unless both the complainant and respondent file a written waiver of the right to hearing under these rules.

721—25.9(17A,39A,47) Written decisions, available remedies.

25.9(1) Decision format. All final determinations resolving complaint proceedings shall be in writing and shall include findings of fact and conclusions of law as required by Iowa Code section 17A.16(1).

25.9(2) Violation found—remedies. If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that a violation of Title III has been established, the presiding officer shall issue an order providing for an appropriate remedy. The remedy so provided shall be designed to ensure compliance with the requirements of Title III and may include an order to any respondent directing the respondent to take specified action or prohibiting the respondent from taking specified action with respect to a past, immediately pending, or future election. The remedy shall not include an award of monetary damages or attorney's fees.

25.9(3) No violation found. If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that no violation of Title III has been established, the presiding officer shall issue an order dismissing the complaint.

721—25.10(17A,39A,47) Hearings.

25.10(1) If a hearing is desired by the complainant, a request for a hearing on the record shall be included within the complaint or made by submitting a written request for hear-

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ing no later than ten days following service of the answer by the respondent.

25.10(2) If a hearing is desired by the respondent, a request for a hearing on the record shall be included within the answer.

25.10(3) Hearings shall be conducted pursuant to rules 721—25.23(17A) through 25.26(17A).

25.10(4) Notice of the time and place of hearing will be provided to each party by the presiding officer. When possible, a written notice will be served upon each party a minimum of seven days prior to the time of hearing. If the circumstances underlying the complaint necessitate expedited resolution prior to a pending election, the period of notice may be shortened and notice may be provided by facsimile, telephone, or E-mail.

721—25.11(17A,39A,47) Time requirements.

25.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

25.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

721—25.12(17A,39A,47) Waiver of procedures. Unless otherwise precluded by law, the parties in a complaint proceeding may waive any provision of this chapter. However, the presiding officer in the presiding officer's discretion may refuse to give effect to such a waiver when the presiding officer deems the waiver to be inconsistent with the public interest.

721—25.13(17A,39A,47) Telephone and electronic proceedings. The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the proceeding, will be considered when location is chosen. Objections, if any, shall be filed with the presiding officer and served on all parties at least three business days in advance of hearing.

721—25.14(17A,39A,47) Disqualification.

25.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a complaint proceeding if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated, in connection with that proceeding, the specific controversy underlying that proceeding, another pending factually related complaint proceeding, or a pending factually related controversy that may culminate in a complaint proceeding involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that complaint proceeding, the specific controversy underlying that complaint proceeding, or a pending factually related complaint proceeding or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the proceeding or any other significant personal interest that could be substantially affected by the outcome of the proceeding;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the proceeding, or an officer, director or trustee of a party; (2) is a lawyer in the proceeding; (3) is known to have an interest that could be substantially affected by the outcome of the proceeding; or (4) is likely to be a material witness in the proceeding; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that proceeding.

25.14(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is jurisdiction to initiate a proceeding, or exposure to factual information while performing other functions, including fact gathering for purposes other than investigation of the matter which culminates in a complaint proceeding. Factual information relevant to the merits of a complaint proceeding received by a person who later serves as presiding officer in that proceeding shall be disclosed if required by Iowa Code section 17A.17(3) and rule 721—25.26(17A).

25.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

25.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 25.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

25.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

25.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect.

721—25.15(17A,39A,47) Consolidation—severance.

25.15(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more complaint proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

25.15(2) Severance. The presiding officer may, for good cause shown, order any complaint proceedings or portions thereof severed.

721—25.16(17A,39A,47) Service and filing of pleadings and other papers.

25.16(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other

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paper filed in a complaint proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding simultaneously with their filing. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. Once a presiding officer has been assigned to a proceeding, copies of all motions or other written submissions shall also be served on the presiding officer.

25.16(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

25.16(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a complaint proceeding shall be filed with the presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

25.16(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is received by the state commissioner of elections or the assigned presiding officer. If a document required to be filed within a prescribed period or on or before a particular date is received after such period or date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing.

25.16(5) Proof of mailing. Proof of mailing includes either a legible, nonmetered United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert name of presiding officer) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)_____ (Signature)_____

25.16(6) Electronic service. The presiding officer may by order permit service or filing of particular documents by facsimile, E-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order, facsimile or electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable.

721—25.17(17A) Discovery.

25.17(1) Discovery procedures applicable in civil actions are applicable in complaint proceedings. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure. Discovery may be limited if the circumstances underlying the complaint necessitate expedited resolution of the allegations prior to a pending election.

25.17(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 25.17(1). The presiding officer may rule on the basis

of the written motion and any response, or may order argument on the motion.

25.17(3) Evidence obtained in discovery may be used in the complaint proceeding if that evidence would otherwise be admissible in that proceeding.

721—25.18(17A) Issuance of subpoenas in a complaint proceeding.

25.18(1) Subpoenas issued in a complaint proceeding may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the presiding officer upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

- a. The nature of the issues in the proceeding reasonably justifies the issuance of the requested subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

25.18(2) A request for a subpoena shall include the following information, as applicable:

- a. The name, address and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested;
- f. The date, time, and location for production or inspection and copying;
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 25.18(1) have been satisfied.

25.18(3) Each subpoena shall contain, as applicable:

- a. The caption of the proceeding;
- b. The name, address and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records or other real evidence the person is commanded to produce;
- g. The date, time, and location for production or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address and telephone number of the executive secretary or designee;
- j. The date of issuance;
- k. A return of service.

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25.18(4) The presiding officer or designee shall mail copies of all subpoenas to the parties to the complaint proceeding. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

25.18(5) Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the complaint proceeding who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the presiding officer a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

25.18(6) Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer or administrative law judge may schedule oral argument or hearing by telephone or in person.

25.18(7) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the presiding officer in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 721—25.29(17A) and 25.30(17A), provided that all of the time frames are reduced by one-half.

25.18(8) If the person contesting the subpoena is not a party to the proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the complaint proceeding.

721—25.19(17A) Motions.

25.19(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

25.19(2) Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by ruling of the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

25.19(3) The presiding officer may schedule oral argument on any motion. If the presiding officer requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 721—25.29(17A).

25.19(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an order of the presiding officer.

25.19(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

25.19(6) Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not

less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a complaint proceeding is subject to rehearing pursuant to rule 721—25.31(17A) and appeal pursuant to rule 721—25.30(17A).

721—25.20(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

25.20(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

25.20(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance, and may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

721—25.21(17A) Withdrawals. A complainant may withdraw a complaint prior to the hearing upon written notice filed with the presiding officer and served on all parties. Unless otherwise ordered by the presiding officer, a withdrawal shall be with prejudice.

721—25.22(17A) Intervention.

25.22(1) Motion. A motion for leave to intervene in a complaint proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. Any party may file a response within seven days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

25.22(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed at least ten days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. An intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the proceeding unless binding the intervenor would be inequitable or unjust. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

25.22(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the inter-

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ests of the movant are not adequately represented by existing parties.

25.22(4) Effect of intervention. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

721—25.23(17A) Hearing procedures. The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections. The presiding officer may request that an administrative law judge assist in performing any of these functions.

25.23(1) Examination of witnesses. All witnesses shall be sworn or affirmed by the presiding officer or the court reporter, if a court reporter is provided by one of the parties, and shall be subject to cross-examination. The presiding officer and the administrative law judge have the right to examine a witness at any stage of the witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

25.23(2) Public hearing. The hearing shall be open to the public.

25.23(3) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the state commissioner of elections for at least five years from the date of decision.

25.23(4) Order of proceedings. Before testimony is presented, the record shall show the identity of the presiding officer, the identity of the administrative law judge, if any, the identity of the parties and their representatives, and the fact that all testimony is being recorded.

a. The presiding officer or designated person may read a summary of the complaint and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The complainant shall make a brief opening statement, which may include a summary of allegations within the complaint and the witnesses and documents to support such charges.

c. Each respondent shall be offered an opportunity to make an opening statement, including the names of any witnesses the respondent desires to call in defense. A respondent may elect to defer making the opening statement until just prior to the presentation of evidence by the respondent.

d. Evidence on behalf of the complainant shall be presented.

e. Evidence on behalf of the respondent(s) shall be presented.

f. Rebuttal evidence on behalf of the complainant, if any, shall be presented.

g. Rebuttal evidence on behalf of the respondent(s), if any, shall be presented.

h. Closing arguments first on behalf of the complainant, then on behalf of the respondent(s), and then rebuttal, if any, on behalf of the complainant shall be made.

The order of proceedings may be tailored to the nature of the complaint proceeding.

25.23(5) Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

25.23(6) Sequestering witnesses. The presiding officer, on the presiding officer's own motion or upon the request of a party, may sequester witnesses.

721—25.24(17A) Evidence.

25.24(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

25.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

25.24(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

25.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties and the presiding officer. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

25.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

25.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

25.24(7) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

721—25.25(17A) Default.

25.25(1) If a party fails to appear or participate in a complaint proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

25.25(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a complaint proceeding become final action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 721—25.30(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the complaint proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a per-

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son with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

25.25(3) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

25.25(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

25.25(5) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

25.25(6) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

25.25(7) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 721—25.32(17A).

721—25.26(17A) Ex parte communication.

25.26(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such proceeding in connection with any issue of fact or law in the proceeding except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with those engaged in personally investigating as defined in subrule 25.14(2), or advocating in either the proceeding under consideration or a pending factually related proceeding involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

25.26(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a complaint proceeding and continue for as long as the proceeding is pending.

25.26(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

25.26(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 721—25.4(17A,39A,47) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

25.26(5) Persons who jointly act as presiding officers in a pending complaint proceeding may communicate with each other without notice or opportunity for parties to participate.

25.26(6) The director of elections or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate

as long as the director or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and complies with subrule 25.26(1).

25.26(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 721—25.20(17A).

25.26(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a complaint proceeding must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

25.26(9) Promptly after being assigned to serve as presiding officer at any stage in a complaint proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

25.26(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, or censure.

721—25.27(17A) Recording costs. Upon request, the presiding officer shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

721—25.28(17A) Final decisions, publication and party notification.

25.28(1) Final decision. When the state commissioner of elections or the voter registration commission presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the presiding officer shall be filed with the state commissioner of elections. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to all parties of record.

25.28(2) Publication of decisions. Final decisions in all complaint proceedings, including consent agreements and consent orders, are public records which shall be indexed and made available for public inspection by the office of the state commissioner of elections as required by Iowa Code section

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17A.3(1)“e.” In addition, all final decisions shall be published by posting on the Internet Web site maintained by the office of the state commissioner of elections.

721—25.29(17A) Interlocutory appeals. Upon written request of a party or on the presiding officer's own motion, the presiding officer may review a preliminary order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the presiding officer shall weigh the extent to which the presiding officer's granting of the interlocutory appeal would expedite final resolution of the proceeding and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within seven days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

721—25.30(17A) Appeals and review.

25.30(1) Proposed decision. Decisions issued by an administrative law judge are proposed decisions. All complaint proceeding decisions must be issued by the state commissioner of elections or voter registration commission, as appropriate. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the state commissioner of elections or voter registration commission, as appropriate.

25.30(2) Appeal by party. Any adversely affected party may appeal a proposed decision to the state commissioner of elections or voter registration commission within 15 days after issuance of the proposed decision.

25.30(3) Review. The state commissioner of elections or voter registration commission may initiate review of a proposed decision at any time within 15 days following the issuance of such a decision.

25.30(4) Notice of appeal. An appeal of a proposed decision is initiated by the filing of a timely notice of appeal with the state commissioner of elections or voter registration commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

25.30(5) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within seven days of service of the notice of appeal. The state commissioner of elections or voter registration commission may remand a proceeding to the administrative law judge for further hearing or may preside at the taking of additional evidence.

25.30(6) Scheduling. The state commissioner of elections or voter registration commission shall issue a schedule for consideration of the appeal.

25.30(7) Briefs and arguments. Unless otherwise ordered, within ten days of the notice of appeal or order for re-

view, each appealing party may file exceptions and briefs. Within ten days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state commissioner of elections or voter registration commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The state commissioner of elections or voter registration commission may shorten or extend the briefing period, as appropriate.

25.30(8) Record. The record on appeal or review shall be the entire record made before the administrative law judge.

721—25.31(17A) Applications for rehearing.

25.31(1) By whom filed. Any party to a complaint proceeding may file an application for rehearing from a final order.

25.31(2) Contents of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the final decision on the existing record and whether, on the basis of the grounds enumerated in subrule 25.31(3), the applicant requests an opportunity to submit additional evidence.

25.31(3) Additional evidence. A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

25.31(4) Time of filing. The application shall be filed with the state commissioner of elections within 20 days after issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the state commissioner of elections.

25.31(5) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the state commissioner of elections shall serve copies of the application on all parties.

25.31(6) Disposition. An application for rehearing shall be deemed denied unless the presiding officer grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the state commissioner of elections.

25.31(7) Proceedings. If the presiding officer grants an application for rehearing, the presiding officer may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the presiding officer may issue a ruling without oral argument or hearing. The presiding officer may, on the request of a party or on the presiding officer's own motion, order or permit the parties to provide written argument on one or more designated issues. The presiding officer may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

721—25.32(17A) Stays of orders.

25.32(1) When available. Any party to a complaint proceeding may petition the presiding officer for a stay or other temporary remedy, pending judicial review of all or part of

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that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

25.32(2) When granted. In determining whether to grant a stay, the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5)"c."

721—25.33(17A) No factual dispute complaint proceedings. If the parties agree that no dispute of material fact exists, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

721—25.34(17A) Alternate dispute resolution. If, as required by subrule 25.1(2), a final determination is not issued within 90 days of the date of the filing of a complaint and the complainant does not agree to allow a longer period for making the determination, the complaint shall be transferred to a board of arbitration, which shall resolve the complaint within 60 days from the date of transfer.

25.34(1) The board of arbitration shall be composed of the following three members: one member designated by the complainant, one member designated by the state commissioner of elections, and a third member jointly agreed to by the first two members.

25.34(2) The board of arbitration shall have access to the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive additional testimony, evidence, or other submissions. The board of arbitration shall determine the appropriate resolution of the complaint by a majority vote and shall issue a written decision as required by rule 721—25.9(17A,39A,47). The board's decision shall be considered the final decision upon the complaint for purposes of publication, rehearing and judicial review.

721—25.35(17A) Judicial review. Judicial review of the final decision may be sought in accordance with the terms of Iowa Code chapter 17A.

25.35(1) Consistent with Iowa Code section 17A.19(3) if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

25.35(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in rule 721—25.31(17A).

These rules are intended to implement 42 U.S.C. 15512(a)(1).

ARC 2518B

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 24, "Claims and Benefits," Iowa Administrative Code.

The amendments to this chapter make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m. on July 2, 2003, to Joseph Bervid, Workforce Development Department, Unemployment Insurance Services Division, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m. on July 2, 2003, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who wish to convey their views orally should contact Joseph Bervid at (515)281-5526 or at the above address.

These amendments are intended to implement Iowa Code sections 96.3, 96.4(1), 96.4(2), 96.4(3), 96.5, 96.6, 96.19(6)"a," 96.19(38), and 96.29.

The following amendments are proposed.

ITEM 1. Amend rule 871—24.1(96) as follows:

Amend the introductory paragraph as follows:

871—24.1(96) Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in *Iowa Code* chapter 96 of the Code shall be construed in the sense in which they are defined as they are defined in *Iowa Code* chapter 96.

Amend subrule 24.1(1) as follows:

24.1(1) Additional claim. An application for determination of eligibility for benefits which certifies to the beginning date of a period of unemployment and which would fall within a benefit year previously established for which a continued claim or claims may be filed and which follows a period of employment which occurred subsequent to the date of filing the last new, additional, reopened or continued claim filed on an established claim which follows a period of employment.

Amend subrule **24.1(12)**, paragraph "b," as follows:

b. Chargeable employer. An employer who has had base period wages transferred accruing to their the employer's account due to a requalification decision an employer liability determination.

Amend subrule 24.1(25) as follows:

24.1(25) Claim. A request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment. (The reference to waiting period applies only to new claims filed prior to July 4, 1976. See rule 24.12(96).)

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Amend subrule **24.1(25)**, paragraph “b,” subparagraphs (2), (8), (9), and (12), as follows:

(2) Additional claim. An application for determination of eligibility for benefits which certifies to the beginning date of a period of unemployment and which would fall within a benefit year previously established for which a continued claim or claims may be filed and which follows a period of employment which occurred subsequent to the date of filing the last new, additional, reopened or continued claim filed on an established claim which follows a period of employment.

(8) Continued claim. A continued claim is a request for benefit payment. ~~Continued claims are~~ A continued claim is a compensable claims claim. It is an electronic, oral or written application which certifies to the completion of a week of total unemployment or partial employment to claim benefit benefits for a compensable week.

(9) Initial claim. An application for a determination of eligibility for benefits which determination sets forth the weekly benefit amount and duration of benefits for a benefit year. ~~Either a new or an additional claim.~~

(12) Intrastate claim. A claim filed in the state of residence against wages earned in ~~the that state of residence or by an interstate commuter.~~

Rescind subrule **24.1(25)**, paragraph “b,” subparagraph (22).

Amend subrule 24.1(52) as follows:

24.1(52) Handbook. The handbook for interstate claims-taking published ~~provided~~ by the manpower administration *Employment and Training Administration of the United States Department of Labor.*

Amend subrule 24.1(67) as follows:

24.1(67) Interview.

a. Benefit rights interview information. An interview with ~~Information provided to~~ a claimant for the purpose of explaining the claimant's rights and responsibilities under the law; or alternatively, an interview with a claimant who has been determined to be monetarily ineligible for purposes of explaining the claimant's monetary determination, ascertaining the possibility of missing wage credits, and advising the claimant as to possible rights. Such interviews ~~information~~ may be given on a group basis or on an individual basis ~~or the information may be provided electronically.~~

b.—Reserved.

Amend subrule **24.1(68)**, paragraph “a,” as follows:

a. Itinerant office. ~~A location at which special unemployment insurance services such as fact-finding are provided on a scheduled part-time basis by staff from a workforce development center operated at another location. Unemployment insurance service center. A full-time office staffed with workforce development staff to provide unemployment insurance services to the public.~~

Rescind and reserve subrules **24.1(78)** and **24.1(89)**.

Amend subrule **24.1(113)**, paragraph “a,” as follows:

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Amend subrule 24.1(115) as follows:

24.1(115) Social security account number. The identification number assigned to an individual by the bureau of old

age and survivors insurance *Social Security Administration* under the Social Security Act.

ITEM 2. Amend rule 871—24.2(96) as follows:

Amend subrule **24.2(1)**, paragraph “a,” subparagraph (1), as follows:

(1) ~~Any An individual shall report in person at the office for filing an initial claim for benefits on any day from Monday through Friday during the posted hours may file an initial claim for unemployment benefits by telephone, in person or other means prescribed by the department or may call the service center during regular business hours.~~ Claims filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

Amend subrule **24.2(1)**, paragraph “b,” introductory paragraph, as follows:

b. The procedure for filing an initial claim. An individual, following a separation from work, shall report in person at the nearest workforce development center with the individual's social security number, and the individual shall register for work and file a claim for benefits on the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, prescribed by the department and shall ~~set forth the following provide, in addition to other requested information, the following information:~~

Amend subrule **24.2(1)**, paragraph “b,” subparagraphs (8) and (9), as follows:

(8) Number, name and relationship of any dependents claimed. As used in this subparagraph, “dependent” is defined as: spouse, son or daughter of the claimant, or a dependent of either; stepson or stepdaughter; foster child or child for whom claimant is a legal guardian; brother, sister, stepbrother, stepsister; father or mother of claimant, stepfather or stepmother of the claimant; son or daughter of a brother or sister of the claimant (nephew or niece); brother or sister of the father or mother of the claimant (uncle or aunt); son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the claimant; an individual who lived in the claimant's home as a member of the household for the whole year; cousin.

A “spouse” is defined as an individual who does not earn more than \$120 in gross wages in one week. The reference week for this monetary determination shall be the gross wages earned by the spouse in the calendar week immediately preceding the effective date of the claim.

A “dependent” means an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return or will be claimed for the current income tax year. The same dependent shall not be claimed on two separate monetarily eligible concurrent established benefit years. An individual cannot claim a spouse as a dependent if the spouse has listed the claimant as a dependent on a current claim.

(9) The option of filing for continued benefits by ~~submitting the Claim for Benefits, Form 60-0151, or filing by using the voice response continued claim system or by other means designated by the department.~~

Amend subrule **24.2(1)**, paragraph “c,” subparagraphs (1), (3), (5) and (6), as follows:

(1) Group “1” claimants are workers who have a definite attachment to a specific employer or trade and have reasonable employment prospects in a reasonable period of time. These claimants will be registered by the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, and will include the following: seasonally laid-off claimants with normal return prospects and no openings in the area for work.

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(3) Group "3" claimants are workers who are employed on a reduced workweek or temporarily unemployed for a period, verified by the department, ~~not to exceed of four consecutive weeks or less, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular "employer."~~ This group pertains only to those individuals who worked full-time and will again work full-time if the individual's employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group "1," "2," "5," or "6."

(5) Group "5" claimants are those individuals who are members of unions, trades, or professionals having their own placement facilities. Claimants assigned to this group will be registered by the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, in the workforce development center ~~for work~~. A paid-up membership is acceptable as evidence of membership in such an organization. Loss of membership shall result in an assignment to group "2."

(6) Group "6" claimants are those individuals whose occupations are of a nature that utilize résumés ~~and or who~~ are normally unable, due to factors such as occupation, distance, etc., to make in-person contacts for employment.

Amend subrule 24.2(1), paragraphs "e" and "g," as follows:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

~~The method of reporting and the payment of benefits, provided the individual is otherwise eligible, shall be on a bi-weekly basis by mail if the claimant files a Form 60-0151.~~

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's ~~account at a financial institution's account institution~~ or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has furnished to the department a signed Form 60-0151, Claim for Benefits, or filed ~~completed~~ a voice response continued claim ~~or claimed benefits as otherwise directed by the department~~. The bi-weekly claim for benefit payment shall be mailed not earlier than noon of the second Saturday of the biweekly reporting period and, unless reasonable cause can be shown for the delay, not later than Friday of the week immediately following the biweekly reporting period. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

~~On the Form 60-0151, Claim for Benefits, the~~ The individual shall set forth the following:

(1) to (6) No change.

Amend subrule 24.2(2), paragraphs "a," "b" and "d," as follows:

a. ~~An individual may file a claim for unemployment benefits by completing Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, at a workforce development center. If an individual is in a continuous filing status, and a transitional claim needs to be filed, a Form 65-5526 may be mailed to the claimant to be completed, signed and mailed or faxed to the local office identified. The form shall then be transmitted to the claims section for processing. A notice of claim filing, which includes the name and social security number of the individual claiming benefits, shall be sent to each base period employer on record and the last employer if different than the base period employer unless the separation issue has previously been adjudicated.~~

b. Even though the claims taker may believe that the claimant cannot meet the eligibility conditions required by statute, the claims taker shall in no instance refuse to accept a claim from any unemployed individual. If the claimant elects to file a claim, even though the claimant's eligibility may be questionable, the claim shall be accepted without hesitance. The claimant must ~~produce~~ *provide* adequate *proof of* identification such as a driver's license, car registration, or union membership card ~~or supply personally identifying information~~.

d. If the check of the files does not disclose a previous claim and the claimant states that such claimant *a claim* has not *been* filed in some other workforce development center during the past year, a new claim shall be taken.

Amend subrule 24.2(2), paragraph "e," subparagraph (3), as follows:

(3) A claimant in a continuous reporting status, employed with the same employer, may exceed the claimant's weekly benefit amount plus \$15 for four consecutive weeks before the individual is required to file an additional claim for benefits by completing the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance.

Amend subrule 24.2(3), paragraph "a," as follows:

a. Initial interstate claims. The filing of an initial interstate claim shall conform to all sections *requirements* of this rule with the exception of the initial claim form. Both agent and liable states shall use the Initial Interstate Claim, Form 61-1000(1B-1), *unless otherwise directed by the Interstate Handbook*.

Rescind subrule 24.2(3), paragraph "b."

Amend subrule 24.2(4), paragraph "a," as follows:

a. A request for cancellation of an unemployment insurance claim may be made by the individual in writing and be directed to the Unemployment Insurance Claims Section Service Center, Department of Workforce Development, 1000 East Grand Avenue P.O. Box 10332, Des Moines, Iowa 50319 50306. The statement must include the specific reason for the request and contain as much pertinent information as possible so that a decision can be made.

ITEM 3. Amend rule 871—24.3(96) as follows:

Amend subrules 24.3(1) and 24.3(3) as follows:

24.3(1) The claims taker must ~~enter~~ *have* the social security number on the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance *of the claimant*. The

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correct social security number is essential in the processing of the claim. Therefore, if the claimant has a social security card, the number must be taken from that card *or be provided by the claimant*. If the claimant has two or more social security numbers, the claim shall be held until the claimant ascertains which number is correct. The Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, will be held for such information for 30 days after which the claim shall be submitted without a number. If the social security card is illegible, or has been lost or destroyed, the number taken from a prior inactive claim or W-2 form will be acceptable.

24.3(3) In all such instances, the claims taker shall take the claim and hold it in the workforce development center pending receipt of the social security number for a period not to exceed 30 days. The Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, will be placed in the numerical hold file for release 30 days later. If no number is provided by the claimant within 30 days, the claims taker shall submit the claim without a number. Such claims will be determined as ineligible (no wage credits).

Rescind and reserve subrules **24.3(4)** and **24.3(5)**.

Amend subrule 24.3(6) as follows:

24.3(6) The department desires that workforce development centers *will* assist the claimant in every reasonable manner so that the claim may be processed in the shortest possible time.

ITEM 4. Amend rule 871—24.4(96) as follows:

Amend 871—24.4(96), catchwords, as follows:

871—24.4(96) Benefit rights interview information.

Amend subrules 24.4(1) and 24.4(2) as follows:

24.4(1) Intrastate benefits. A benefit rights interview *Benefit rights information* is given by a workforce development representative *provided* to each individual filing an initial claim for benefits to review with the individual *explain* those provisions in the law and rules which govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program. The benefit rights interview *information* may be given by an individual or group type interview *or by telephone or electronically*. Each individual's signature on Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, confirms that the individual received the A Form 70-6200, Facts About Unemployment Insurance, and understood the information contained in its Claimant Confirmation Statement, *will be provided* which explains the individual's rights, benefits, and responsibilities under Iowa's unemployment insurance program.

24.4(2) Interstate benefits. A benefit *Benefit rights interview information* is not required for each individual who files an initial claim for interstate benefits. *; however, at the time of filing of the initial claim for interstate benefits, the individual is given Form 60-0134, Information for Interstate Claimants, and is advised on how to complete Form 60-1004 (IB-2) Continued Interstate Claim, and that the Claimants will be advised to contact the liable state which will provide additional information explaining the individual's rights, benefits, and responsibilities under the liable state's unemployment insurance program.*

Rescind and reserve subrule **24.4(3)**.

ITEM 5. Amend rule 871—24.5(96) as follows:

Amend subrule **24.5(1)**, introductory paragraph and paragraph "a," as follows:

24.5(1) Mass separation. A mass separation is a layoff of all or a large number of workers, either permanently, indefi-

nately, or for an expected *a specific* duration of seven or more days, by one or more employers in the same area, at approximately the same time, and for the same common reason. The Form 60-0331, Claim for Job Insurance, shall be used to take claims for benefits from individuals involved in a mass separation.

a. The special procedures for mass claims taking shall *claim filing may* be applied only if the usual methods would overtax the facilities of the workforce development center or sufficient staff is not available to handle the load efficiently *by the department, and the procedures may include taking claims at a designated site or utilizing an electronic mass claim entry form.*

Amend subrule 24.5(2), introductory paragraph, as follows:

24.5(2) Cooperation of employers. To enable workforce development centers to make the preliminary arrangements for mass claim taking, the major employers in the area should notify the local office in advance, as soon as they know that a mass separation will take place. *The workforce development center shall provide the information to legal counsel for the unemployment insurance services bureau so that the mass claim separation can be coordinated between the affected parties.* This information should include:

Rescind and reserve subrule **24.5(2)**, paragraph "f."

Amend subrules 24.5(3) and 24.5(4) as follows:

24.5(3) Methods of mass claims *claim* taking. The department may adopt a plan, which is based on the appropriateness of the particular office involved *employer's workers*, the circumstances and the size of the layoff.

24.5(4) Announced mass separation. If a mass separation occurs about which the workforce development center *department of workforce development* has not been advised in advance in sufficient time to preschedule claimants, the overflow of *then* the claimants that cannot be serviced on the day they appear to file claims should be assigned a day and time to report on some subsequent day. Those coming any appreciable distance should be given priority and their claims taken *on the same day. will be advised of the alternative methods to file their claims as quickly as possible. The department will develop a plan to provide service to the claimants as quickly as possible under the circumstances.*

ITEM 6. Amend rule 871—24.8(96) as follows:

Amend subrule **24.8(1)**, paragraph "a," introductory paragraph, as follows:

a. The Form 65-5317, Notice of Claim, *and* the Form 68-0221, Request for Wage and Separation Information, *or* the Form 68-0615, Wage Verification Request, shall be addressed to:

Amend subrule **24.8(2)**, paragraphs "a" and "d," as follows:

a. The employing unit which receives a Form 65-5317, Notice of Claim, *or* a Form 68-0221, Request for Wage and Separation Information, *or* a Form 68-0615, Wage Verification Request, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

d. The employing unit also has the option of *notifying* to mail a Form 60-0154, Notice of Separation, to the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. *The notification may be made by mail using Form 60-*

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0154, Notice of Separation, or by telephone using a telephone number designated by the department.

(1) and (2) No change.

Amend subrule **24.8(3)**, paragraphs “a” and “b,” as follows:

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be accomplished by properly completing the form or computerized format provided by the department.

b. A notice of separation, and any paper response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be executed by the employing unit on the form provided by the department under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment or by completing the computerized form designated by the department.

ITEM 7. Amend subrule **24.9(2)**, paragraph “a,” as follows:

a. When a protest of an initial claim for benefits is filed, the department shall mail to the individual claiming benefits, and the most recent or any other base period employing unit, either a Form 60-0186 (typewriter manually generated) or a Form 65-5323 (computer generated), Unemployment Insurance Decision, which affects the individual's right to benefits.

ITEM 8. Amend rule 871—24.11(96) as follows:

Amend subrule 24.11(1) as follows:

24.11(1) Purpose. The eligibility review program is accomplished by completion of the Form 60-0232 for individuals claiming intrastate benefits and Form 61-1005 (IB-10) for individuals claiming interstate benefits which are designed to be completed by the individual. The forms are used to accelerate the individual's return to work and systematically review the individual's efforts toward the same goal.

Amend subrule **24.11(2)**, paragraph “a,” as follows:

a. Selected individuals claiming intrastate benefits and interstate benefits, except those filing a partial claim, shall be required to complete the eligibility review Form 60-0232 at times determined by the department after they have filed an initial or additional intrastate claim.

Rescind subrule **24.11(3)**, paragraph “b.”

Amend subrule **24.11(2)**, introductory paragraph and paragraph “a,” as follows:

24.11(3) Eligibility review forms form. Forms Form 60-0232 and 61-1005 (IB-10) contain contains information relating to eligibility and availability furnished by and to the individual, instructions and advice on reemployment that is given to the individual and the results of the individual's job search efforts.

a. The Eligibility Review Forms Form 60-0232 and 61-1005 (IB-10) encourage encourages individuals to record information that bears directly on reemployment prospects and continued eligibility data.

Amend subrule **24.11(4)**, paragraphs “a,” “c” and “d,” as follows:

a. After an individual has claimed a number of weeks of intrastate benefits prescribed as designated by the department and been scheduled for an eligibility review, the workforce development center shall receive a computer generated selected list of individuals claiming benefits that were sent a Form 60-0232, Eligibility Review Questionnaire. This The

list shall be retained in the workforce development center so work search assistance and reemployment services can be provided as needed by the claimant the unemployment insurance representative can keep track of individuals who fail to respond.

c. An Eligibility Review Questionnaire shall be mailed or provided to the individual.

d. A copy of the Eligibility Review Questionnaire shall be sent to the workforce development center only on an individual who is in an active status at the time of its printing. If the individual fails to respond to the Eligibility Review Questionnaire within the designated period of time printed on the questionnaire, the workforce development center shall issue a Form 60-0131, Notice to Report. If the individual does not respond after this action has been taken, the workforce development center department must issue an appropriate failure to report decision and lock the claim to prevent payment.

Rescind subrule **24.11(4)**, paragraph “g.”

Rescind subrule **24.11(6)**, paragraph “b.”

Rescind and reserve subrule **24.11(8)**.

ITEM 9. Amend rule 871—24.13(96) as follows:

Amend subrule 24.13(1) as follows:

24.13(1) Procedures for deducting payments from benefits. Any payment defined under subrules 24.13(2) and 24.13(3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer:

The individual claiming benefits is required to designate on the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13(2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18(96). The amount of any payment under subrule 24.13(3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

Amend **24.13(4)**, paragraph “i,” as follows:

i. Compensation for military service-connected disability from the Department of Veterans Affairs.

ITEM 10. Amend subrule 24.17(1), introductory paragraph, as follows:

24.17(1) Employer notice specified vacation or holiday pay only. The Form 65-5317, Notice of Claim, the Form 62-2048, Request for Federal Wage and Separation Information, the Form 61-1002 (IB-3), Claimant/Employer Separation Statement, the Form 68-0074, Wage Verification Notice of Claim Filing on Interstate Claims, and the Form 62-2049, Request for Wage and Separation Information on Federal Employment Additional Claim, which are returned by the employer for the purpose of notification of vacation pay,

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shall be used as notification to the department that vacation pay is applicable. The Forms 65-5317, 62-2048, 61-1002(~~IB-3~~), 68-0074, and the 62-2049 received in the administrative office shall be routed to the appropriate local office or to the administrative office interstate unit, as indicated, for the following action:

ITEM 11. Amend rule **871—24.18(96)**, implementation paragraph, as follows:

This rule is intended to implement Iowa Code sections 96.3, 96.4, and 96.19(9 38)"~~b.~~".

ITEM 12. Amend rule 871—24.22(96) as follows:

Amend subrule **24.22(2)**, paragraph "**i**," subparagraph (3), as follows:

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(9 38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Amend subrule **24.22(2)**, paragraph "**m**," as follows:

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions as in the case of physically handicapped individuals.

Amend subrule **24.22(3)**, paragraph "**a**," subparagraph (4), as follows:

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

Amend subrule **24.22(3)**, paragraphs "**b**" and "**e**," as follows:

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the local workforce development center department deems necessary.

e. Seniority rights. An individual who fails to exercise seniority rights to replace another employee with less seniority has the work search requirement waived during a period of regular benefits. This waiver does not apply to the individual who is receiving extended benefits or federal supplemental compensation similar federal program benefits.

Amend subrule **24.22(3)** by rescinding paragraph "**f**" and relettering paragraphs "**g**" to "**i**" as "**f**" to "**h**," and amending relettered paragraph "**f**," subparagraphs (1), (2) and (4), as follows:

(1) The Iowa law specifies that an individual must earnestly and actively seek work. This is interpreted to mean that a registration for work at a workforce development center or state employment service office in itself does not meet the requirements of the law. Nor is it interpreted to mean that every individual must make a fixed number of employer con-

tacts each week to establish eligibility. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in claimant characteristics, job prospects in the community, and such other factors as the workforce development center department deems necessary relevant.

(2) The individual is referred to suitable work, when possible, to those employers who have outstanding requests with the department of workforce development for referrals. The individual must meet the minimum lawful requirements of the employer. The individual applies to and obtains the signatures of the employers employer so designated on the form provided, unless the employers refuse employer refuses to sign the form. The individual must return the form to the workforce development center within seven days from the date of issuance department as directed. The individual's failure to obtain the signature of designated employers, who have not refused to sign the form, disqualifies the individual from future benefits until requalified by earning ten times the weekly benefit amount.

(4) Individuals receiving partial benefits are exempt from making personal applications for work, in any week they have worked and received wages from their regular employer. Individuals involved in hiring hall practices must keep in weekly touch with the business agent of that union in which they maintain membership. All other individuals must make contacts with such frequency as the workforce development center department considers advisable, after considering job prospects in the community, the condition of the labor market and any other factors which may have a bearing on the individual's reemployment. A sincere effort must be made to find a job. A contact made merely for the sake of complying with the law is not good enough.

Amend relettered paragraph "**h**" as follows:

h. Job search assistance. Job search assistance classes, including reemployment services, which are sponsored by the department of workforce development and attended by the individual during a week may be counted as one of the individual's work search contacts for that week.

ITEM 13. Amend rule 871—24.23(96) as follows:

Rescind and reserve subrule **24.23(13)**.

Amend subrules 24.23(14) and 24.23(20) as follows:

24.23(14) An individual is deemed not available for work because such individual cannot be contacted by the workforce development center department for referral to possible employment.

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Rescind and reserve subrule **24.23(21)**.

Amend subrules 24.23(32) and 24.23(35) as follows:

24.23(32) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(9 38)"c" are met.

24.23(35) Where the claimant is not able to work and is under the care of a physician medical practitioner and has not been released as being able to work.

Rescind and reserve subrules **24.23(36)** and **24.23(38)**.

Amend subrule 24.23(39), introductory paragraph, as follows:

24.23(39) Where the work search form or the Eligibility Review Form has been deliberately falsified for the purpose of obtaining unemployment insurance benefits. The general

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guide for disqualifications for falsification of work search is listed below. It is intended to be used as a guide only and is not a substitute for the personal subjective judgment of the representative because each case must be decided on its own merits. The administrative penalty recommended for falsification is:

ITEM 14. Amend rule 871—24.24(96) as follows:

Amend subrule **24.24(1)**, paragraph “b,” as follows:

b. Upon notification of a job opening for a claimant a representative of the department shall notify ~~such the~~ claimant ~~by mail to report to the local workforce development center for the purpose of a the~~ job referral. If ~~such the~~ claimant fails to ~~report as directed~~ respond without good cause, ~~such the~~ claimant shall be disqualified until such time as ~~such the~~ claimant ~~reports to contacts~~ the local workforce development center ~~or unemployment insurance service center~~.

Amend subrules 24.24(5), 24.24(6) and 24.24(16) as follows:

24.24(5) Bumping rights to a job. A claimant who fails to exercise seniority rights to bump a less senior employee is eligible for benefits and the provision pertaining to the search for work is waived during a period of regular unemployment insurance benefits. This waiver of the search for work does not apply to a claimant who is receiving extended benefits or federal supplemental compensation.

24.24(6) Claimant physically unable to perform job. A medical certification from a ~~licensed and practicing physician~~ *medical practitioner* must be submitted to support the claimant's statement that work offered is not suitable because of the claimant's physical condition.

24.24(16) Handicap Disabled accessibility to job. A job offer shall not be suitable if a ~~handicapped disabled~~ individual has no access to a building or its facilities.

ITEM 15. Amend subrules 24.26(1), 24.26(2) and 24.26(4) as follows:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire. *The claimant must notify the employer of the problem and that the claimant will be forced to quit if the problem is not corrected.*

24.26(2) The claimant left due to unsafe working conditions. *The claimant must notify the employer of the problem and that the claimant will be forced to quit if the problem is not corrected.*

24.26(4) The claimant left due to intolerable or detrimental working conditions. *The claimant must notify the employer of the problem and that the claimant will be forced to quit if the problem is not corrected.*

ITEM 16. Amend subrules 24.28(5) and 24.28(8) as follows:

24.28(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. *The employment does not have to be covered employment and does not include self-employment.*

24.28(8) The claimant voluntarily left employment. However, there shall be no disqualification under section

96.5(1) if a decision on this same separation has been made on a prior claim by the *employment* appeal board and such decision has become final.

ITEM 17. Amend subrules 24.29(1) and 24.29(3) as follows:

24.29(1) Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, *which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less.* This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

24.29(3) Verification of going out of business. When the unemployment insurance representative is informed by the individual or has knowledge of an employer going out of business at a factory, establishment, or other premises, the unemployment insurance representative ~~forwards~~ *completes* a Form 60-0240, Verification of Business Closing, and ~~refers Form 60-0240 to a the~~ field audit section for assignment to a field auditor who verifies the business closing. *A Form 62-2056, Review of Business Status for Closing Credits, is completed for each succeeding claimant who requests to be included in a redetermination for business closing credits. This form is added to the Form 60-0240 already in the department file for the appropriate pending investigation.* Upon return of the Form 60-0240, ~~from the field audit section, an unemployment insurance the workforce development center representative issues will issue the appropriate decision decisions to all claimants that requested that their unemployment insurance claim be redetermined as a business closing based on the results of the verification investigation.~~

ITEM 18. Amend rule 871—24.31(96) as follows:

Amend subrules 24.31(2) and 24.31(6) as follows:

24.31(2) If the claimant has the qualifying wages for the establishment of a second benefit year as specified in Iowa Code section 96.4(4) which were earned prior to the filing of the previous claim, the claimant must, during or subsequent to that year, have worked in (except in back pay awards) and have been paid wages for insured work totaling at least \$250, to fulfill the condition to be eligible for benefits on a new claim. *Vacation pay, severance pay and bonuses are* is not considered as wages for second benefit year requalification purposes.

24.31(6) Disqualification for lack of the \$250 in insured work ~~condition~~ shall be removed upon the verification that the claimant worked in and has been paid wages for insured work totaling \$250 during or subsequent to the previous benefit year.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections ~~section 96.4(4) and 96.4(5).~~

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ITEM 19. Amend subrule **24.32(3)**, paragraph **"b,"** as follows:

b. An indictable offense means a common law or statutory offense presented on indictment or on county attorney's information, and includes all felonies and all indictable misdemeanors punishable by a fine of more than \$100 \$500 or by imprisonment in the county jail for more than 30 days.

ITEM 20. Amend rule 871—24.33(96) as follows:

Amend subrule **24.33(2)**, paragraphs **"a," "b," "c," "e," "f," "i," "j," "m"** and **"p,"** as follows:

a. As soon as the workforce development center has knowledge of a labor dispute or work stoppage in its administrative area, a report on Form 68-0535, Labor Dispute Report, shall be sent to the administrative office of the department of workforce development, attention: ~~supervisor,~~ *claims-section legal counsel, unemployment insurance services division*, advising of the labor dispute or work stoppage.

b. If the labor dispute or work stoppage is terminated before the report is transmitted to the ~~claims-section legal counsel,~~ *unemployment insurance services division*, the information concerning the termination of the dispute and the date of the worker's return to work must also be entered on Form 68-0535.

c. When the labor dispute or work stoppage is terminated subsequent to the filing of the initial Form 68-0535, the ~~supervisor of the claims-section legal counsel,~~ *unemployment insurance services division*, shall be notified of the termination and return to work dates.

e. In taking initial claims in which there is a labor dispute, the workforce development center will complete *an initial application for unemployment*, the Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, in the normal manner and will also include the union name and local union number.

f. If a claim notice is inadvertently returned by the employer to the workforce development center stating there is a labor dispute, the protest with the postmarked envelope attached shall be transmitted to the ~~claims-section unemployment insurance service center.~~

i. Statements from each individual claiming benefits will be taken ~~at the workforce development center level~~ whenever the work stoppage is considered as a nonunion stoppage, meaning no union representation at the premises of the employer. In such cases, each individual's statement would become a part of the evidence submitted to the administrative office of the department of workforce development.

j. When there is a termination of the work stoppage, or if the issues have not been resolved and all workers returned to work, a report must be made to the ~~supervisor,~~ *claims-section legal counsel, unemployment insurance services division*. The report will include the:

(1) Date on which an agreement was reached on the issues which caused the work stoppage.

(2) Date on which the workers returned to work, or a schedule as to how the workers will return to work.

m. When the employer or the union requests advice and information pertaining to what action ~~they should take~~ *be taken* in regard to the labor dispute, the workforce development center, at ~~this~~ *that* time, should obtain all the information possible from the caller for inclusion in the labor dispute report to the ~~claims-section unemployment insurance services division.~~

p. Employer shall use Form 60-0154, Notice of Separation or Refusal of Work, ~~or the electronic version of that form,~~ to report separations from work by employees for rea-

sons of voluntary leaving, misconduct and job refusal. Form 60-0154 shall not be used by employers to report labor disputes because the document is not designed for that type of an employment separation or work refusal.

Amend subrule **24.33(3)**, paragraphs **"a"** and **"b,"** as follows:

a. In any case in which the payment or denial of benefits will be determined by the provisions of Iowa Code section 96.5(4), the representative of the ~~claims-section~~ *unemployment insurance services division* shall promptly review the evidence submitted, and such additional evidence as may be required, and shall make a decision upon the issues involved under that subsection.

b. The representative of the ~~claims-section~~ *unemployment insurance services division* shall promptly notify all interested parties to the claim of the decision. Said parties shall have ten days, from the date of mailing the decision to the last-known address of record, to appeal the decision.

ITEM 21. Amend rule 871—24.34(96) as follows:

Amend subrule 24.34(6) as follows:

24.34(6) If an initial determination by the representative of the ~~claims-section~~ *unemployment insurance services division* of a labor dispute issue is appealed, the case shall be assigned to an administrative law judge, who shall receive the testimony of any party to the hearing and shall issue a decision on the labor dispute. Such decision may be appealed in conformity with these rules to the employment appeal board of the Iowa department of inspections and appeals.

Amend subrule **24.34(7)**, paragraphs **"a," "b"** and **"c,"** as follows:

a. The ~~department~~ *division* shall presume that any strike or lockout is being conducted in a lawful manner unless evidence to the contrary has been introduced. The ~~department~~ *division* shall presume that any picketing is being conducted in a peaceful manner and that ingress or egress to the employer's facility is not being unlawfully impeded.

b. The ~~department~~ *division* shall presume that where an injunction has been sought against actual or threatened violence, unlawful impedance of ingress or egress, or other unlawful conduct and such injunction shall have been denied on the basis that actual or threatened unlawful conduct has not been established that the picket line is peaceful unless evidence is introduced which establishes the violent nature of picket line activity.

c. If an injunction is obtained, the ~~department~~ *division* shall presume the picket line is peaceful as of the date the injunction is issued unless evidence is introduced which proves the contrary proposition.

Amend the implementation clause as follows:

This rule is intended to implement *Iowa Code* sections 96.5(3) and 96.5(4) as interpreted in the recent Supreme Court of Iowa case, *Robert A. Galvin, et al., vs. Iowa Beef Processors, Inc., et al.*, filed January 18, 1978, and to conform with federal regulations.

ITEM 22. Amend rule 871—24.35(96) as follows:

Amend subrule 24.35(1) as follows:

24.35(1) Except as otherwise provided by statute or by ~~department~~ *division* rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the ~~department~~ *division* shall be considered received by and filed with the ~~department~~ *division*:

a. If transmitted via the United States postal service ~~or its successor,~~ on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department division.

Amend subrule **24.35(2)**, introductory paragraph and paragraphs “b,” “c” and “d,” as follows:

24.35(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department division that the delay in submission was due to department division error or misinformation or to delay or other action of the United States postal service or its successor.

b. The department division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department division error or misinformation or delay or other action of the United States postal service or its successor, the department division shall issue an appealable decision to the interested party.

Amend subrule 24.35(3) as follows:

24.35(3) Any notice, report form, determination, decision, or other document mailed by the department division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last-known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

ITEM 23. Amend subrules 24.36(1) and 24.36(2) as follows:

24.36(1) An interstate claimant is an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. Interstate benefits are payable under the plan approved by the interstate conference of employment security national association of state workforce agencies to unemployed individuals absent from the state(s) in which wage credits were earned.

24.36(2) The department division shall determine unemployment benefit claims for interstate claimants in accordance with applicable state law and rules and shall be in substantial compliance with those rules promulgated by the United States Department of Labor as published in the Code of Federal Regulations, Chapter 20, Parts 609, 615, 616, 617, and 650.

ITEM 24. Amend rule 871—24.37(96) as follows:

Amend subrule **24.37(1)**, paragraph “b,” subparagraphs (1), (2) and (5), as follows:

(1) “Interstate benefit payment plan.” This is the plan approved by the interstate conference of employment security national association of state workforce agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(2) “Interstate claimant.” This is an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The

term interstate claimant shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the department finds that this exclusion would create undue hardship on such a claimant in a specified area.

(5) “Liable state.” A liable state is any state against which an individual files, through from another state, a claim for benefits.

Amend subrule **24.37(1)**, paragraph “e,” subparagraph (1), as follows:

(1) Claims for benefits shall be filed by interstate claimants on uniform interstate claim forms or by using the procedures provided by the liable state and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

Rescind subrule **24.37(1)**, paragraph “e,” subparagraph (2).

Amend subrule **24.37(1)**, paragraph “f,” subparagraph (2), as follows:

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim unless the liable state has a procedure for taking out-of-state claims.

ITEM 25. Amend subrule **24.38(1)**, paragraphs “a” and “e,” as follows:

a. Each state will cooperate with every other state by implementing these uniform combined wage procedures, rules and regulations. This includes the District of Columbia, U.S. Virgin Islands and the Commonwealth of Puerto Rico.

e. The state in which the claim is filed will be the paying state except in those cases in which the individual does not qualify after the transfer has been completed or if the claimant meets the definition of a commuter.

ITEM 26. Rescind and reserve subrule **24.40(1)**.

ITEM 27. Amend rule 871—24.42(96) as follows:

871—24.42(96) Retention of DSS DHS referral form.

When an unemployed parent presents the DSS DHS referral Form PA-2138-5 to the workforce development center representative, the representative will take the form, sign it and complete a Form 60-0330, Application for Job Placement Assistance and/or Job Insurance an application for job placement assistance and/or employment insurance benefits.

24.42(1) The weekly benefit amount and maximum benefit amount of the claimant will be entered in job service comments on Form PA-2138-5. If the person is not monetarily eligible, that notation will be entered and the form mailed to social human services.

24.42(2) A FIP/UP claimant may have the claim protested which can affect eligibility. Social Human services may request additional information on a subsequent Form PA-2138-5 concerning nonmonetary allowances or disqualifications on the claim, which will be furnished in the comments section of the form.

ITEM 28. Amend rule 871—24.46(96) as follows:

Amend subrule 24.46(1) as follows:

24.46(1) Purpose. Extended benefits are benefits paid to an eligible individual during periods of high unemployment in a state under the Federal-State Extended Unemployment Compensation Act of 1970 as amended and the Extended

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Benefit Program Regulations under 20 Code of Federal Regulations Part 615. The purpose of extended benefits is to extend the period of time for which an individual may receive benefits to allow the individual additional time to locate employment in recognition of the likelihood that employment is more difficult to locate *find* during periods of high unemployment in a state. The cost of extended benefits is shared between the federal and state governments.

Amend subrule **24.46(5)**, paragraph “a,” introductory paragraph, as follows:

a. The individual is an exhaustee. An exhaustee is an individual who has exhausted all entitlements to regular benefits under this or any other state law as well as federal civilian employee, *railroad unemployment insurance*, and ex-service member benefits.

Amend subrule **24.46(5)**, paragraph “c,” subparagraph (4) as follows:

(4) For the purposes of this paragraph, actively seeking work means that, for each week following the week in which the individual is furnished the Form 60-0274, Notice to Individuals Claiming Extended Benefits, the individual is required to provide tangible evidence ~~on the Form 60-0151, Claim for Benefits on the weekly claim for benefits~~ that the individual is making a systematic and sustained effort to search for suitable work.

ITEM 29. Amend rule 871—24.47(96) as follows:

871—24.47(96) Disaster benefits. Benefits under the Disaster Relief Act of 1974. Unemployment benefits payable under Public Law 93-288, the Disaster Relief Act of 1974, will be determined in accordance with the rules of the United States Department of Labor and published in the Code of Federal Regulations, Chapter 20, Parts 625 and 650, and Chapter 32, Part 1710.16. These benefits are payable to claimants who are unemployed due to natural disasters. A claimant who is eligible for regular unemployment benefits shall not be eligible for disaster relief benefits *unemployment assistance*.

ITEM 30. Rescind and reserve subrules **24.50(1)**, **24.50(2)**, **24.50(3)**, **24.50(4)** and **24.50(5)**.

ITEM 31. Amend subrules 24.52(8) and 24.52(12) as follows:

24.52(8) Wages earned and payment deferred. Many school employees receive remuneration from their school employers on a 12-month basis for the 9-month period worked. Deductions from unemployment insurance payments are on a “when earned” basis rather than on a “when paid” basis. Deferred wages currently paid which are based on earnings from a prior period are not deductible on a current week claimed pursuant to Iowa Code section 96.19(9)“b” and subrule 24.13(2), paragraph “o.”

24.52(12) Delayed offer and acceptance of a contract or reasonable assurance of employment in the succeeding term or year. School employees who are not offered a contract or reasonable assurance of employment in the succeeding academic term or year are eligible for benefits if all ~~otherwise~~ *other* eligibility conditions are met. However, school employees who subsequently receive a contract or reasonable assurance of employment for the following term or year shall be disqualified under the “between terms denial” provision.

ITEM 32. Amend rule 871—24.58(96), introductory paragraph, and subrule 24.58(4) as follows:

871—24.58(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of employees in an affected unit and those employees will receive a portion of

their regular unemployment insurance benefits. The program is designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment insurance benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer may apply to participate in the program by completing a shared work plan application which must be approved by the department. The employer shall submit the plan to the department 30 days prior to the proposed implementation date. The employer will administer the program in cooperation with the department. Participating employees will complete the employee information form and biweekly claim cards *for benefits* and return them to the employer who will submit them to the department. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and unemployment insurance overpayments will be offset as they are for regular unemployment insurance benefits.

24.58(4) Approval of a plan may be denied or approval of a plan may be revoked at the discretion of the department if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.40 including, but not limited to, the providing of false or misleading information to the department, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

ITEM 33. Amend rule 871—24.59(96) as follows:

Amend subrules 24.59(5) and 24.59(6) as follows:

24.59(5) Processing of payments. The child support recovery unit shall furnish to the department the name and address of the designated public official to ~~which~~ *whom* the amount deducted must be ~~mailed remitted~~. After the deduction, the remaining balance shall be ~~mailed credited~~ to the claimant.

24.59(6) Notice to claimant. The department shall mail a notice to the claimant which explains the beginning date and the amount of the deduction from the claimant’s weekly benefit amount which satisfies the individual’s child support obligation to the child support recovery unit. This notice will be issued when the first deduction is made from the benefit ~~warrant payment~~. The notice shall explain the authority for the deduction and include the claimant’s right of appeal.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 96.3 and 96.20 and ~~Public Law 97-35~~.

ITEM 34. Amend rule 871—24.60(96) as follows:

Amend subrule **24.60(2)**, paragraph “b,” as follows:

b. If the answer is “no,” the claimant shall be requested to present documentary proof of legal residency. Any individual who does not show proof of legal residency at the time of ~~claim filing~~ *it is requested* shall be disqualified from receiving benefits until such time as the required proof of ~~their~~ *the individual’s* status is brought to the local office. The principal documents showing legal entry for permanent residency are the Form I-94 “Arrival and Departure Record” and the Forms I-151 and I-551 “Alien Registration Receipt Card.” These forms are issued by the immigration and naturalization service and should be accepted unless the proof is clearly faulty or there are reasons to doubt their authenticity. *An individual will be required to provide the individual’s alien registration number at the time of claim filing.*

Rescind subrule **24.60(2)**, paragraph “d.”

ARC 2541B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 76, "Application and Investigation," Iowa Administrative Code.

This amendment changes the rules on recovery of Medicaid payments from the estates of Medicaid recipients. Recovery may be waived if collection would reduce the inheritance of a surviving spouse, children under the age of 21, or disabled children, or if collection would create undue hardship on the person inheriting the estate. The uncollected amount becomes a debt against the estate of the person inheriting or becomes due when the surviving child reaches the age of 21.

On the advice of the federal Centers for Medicare and Medicaid Services, the Department requested that the statute authorizing estate recovery be amended to specify that:

- The debt due from the person inheriting is limited to the amount that the person inherited from the Medicaid recipient, rather than the total amount of unrecovered expenditures. The state may recover only against assets inherited from a Medicaid recipient.
- A waiver of collection due to hardship is in effect only so long as the hardship exists. To provide for notification and due process, this provision will apply only to people receiving a hardship waiver after the effective date of the statute.
- Collection waived because the surviving child was under the age of 21 shall be pursued against that child's estate if the child dies before reaching the age of 21.

This amendment conforms the Department's rules to the amended statute.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

The Department of Human Services finds that notice and public participation are unnecessary because the Department is merely adopting statutory provisions. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit on the public by ensuring that rules accurately reflect statutory language. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived in favor of the effective date of the statute.

The Council on Human Services adopted this amendment on May 14, 2003.

This amendment is intended to implement Iowa Code section 249A.5, subsection 2, as amended by 2003 Iowa Acts, House File 489, section 3.

This amendment shall become effective on July 1, 2003.

The following amendment is adopted.

Rescind subrule **76.12(7)**, paragraph "c," and adopt the following **new** paragraph in lieu thereof:

c. If collection of all or part of a debt is waived pursuant to paragraph "b," to the extent that the person received the medical assistance recipient's estate, the amount waived shall be a debt due from the following:

(1) The estate of the medical assistance recipient's surviving spouse, upon the death of the spouse.

(2) The estate of the medical assistance recipient's surviving child who is blind or has a disability, upon the death of the child.

(3) A surviving child who was under 21 years of age at the time of the medical assistance recipient's death, when the child reaches the age of 21.

(4) The estate of a surviving child who was under 21 years of age at the time of the medical assistance recipient's death, if the child dies before reaching the age of 21.

(5) The hardship waiver recipient, when the hardship no longer exists.

(6) The estate of the recipient of the undue hardship waiver, at the time of death of the hardship waiver recipient.

[Filed Emergency 5/16/03, effective 7/1/03]

[Published 6/11/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/11/03.

ARC 2538B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 130, "General Provisions," Iowa Administrative Code.

Iowa Code section 237A.13 requires the Department to determine eligibility for child care assistance based in part on the family's income in relation to the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services. The federal Child Care and Development Block Grant limits income eligibility based on the estimated state median income. These amendments update the child care assistance income limits and the fees parents pay for child care services based on their monthly gross income to be consistent with the federal poverty guidelines and median income for 2003.

Amounts in Column A under Item 1 represent 100 percent of the federal poverty guidelines. These limits would be used to determine income eligibility if insufficient funding required applications to be limited to families in which:

- Parents are employed at least 28 hours per week, or
- Parents under the age of 21 are participating in an educational program leading to a high school diploma or equivalent or in another approved training or education program.

Amounts in Column B under Item 1 represent 140 percent of the federal poverty guidelines. These are the limits normally used to determine income eligibility for families without children who require special-needs care, but would also be applied to special-needs children if funds were insufficient. Income limits are capped at 85 percent of the state median income, affecting the amounts for families of 19 members or more.

Amounts in Column C under Item 1 represent 175 percent of the federal poverty guidelines. These are the limits normally used to determine income eligibility for families with children who require special-needs care. Income limits are capped at 85 percent of the state median income, affecting the amounts for families of 13 members or more.

The sliding fee scale in Item 2 is revised to ensure that families with gross income less than 100 percent of federal

HUMAN SERVICES DEPARTMENT[441](cont'd)

poverty guidelines are not required to pay fees and that the fee schedule covers all potentially eligible families.

These amendments do not provide for waivers in specified situations because higher income limits confer a benefit on the families affected. Families that wish to apply for an exception may do so under the Department's general rule at 441—1.8(17A,217).

The Department finds that notice and public participation are unnecessary because these amendments simply update existing rules following established policy based on mathematical calculations. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit because the amount of income that a family can earn

and still be eligible for child care assistance will increase. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date is waived.

The Council on Human Services adopted these amendments on May 14, 2003.

These amendments are intended to implement Iowa Code section 237A.13.

These amendments shall become effective July 1, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **130.3(1)**, paragraph “**d**,” subparagraph (2), “Monthly Gross Income Limits” table, as follows:

Monthly Gross Income Limits							
Family Size	For Child Care						For All Other Services
	A		B		C		
1 Member	\$ 739	\$ 749	\$1,034	\$1,049	\$1,292	\$1,311	\$ 583
2 Members	995	1,010	1,393	1,414	1,741	1,768	762
3 Members	1,252	1,272	1,752	1,780	2,190	2,225	942
4 Members	1,509	1,534	2,112	2,148	2,640	2,685	1,121
5 Members	1,765	1,795	2,471	2,513	3,089	3,141	1,299
6 Members	2,022	2,057	2,830	2,879	3,538	3,599	1,478
7 Members	2,279	2,319	3,190	3,247	3,987	4,059	1,510
8 Members	2,535	2,580	3,549	3,612	4,436	4,515	1,546
9 Members	2,792	2,842	3,908	3,978	4,885	4,973	1,581
10 Members	3,049	3,104	4,268	4,346	5,335	5,433	1,612
11 Members	3,305	3,366	4,627	4,712	5,784	5,891	1,645
12 Members	3,562	3,628	4,986	5,079	6,154	6,348	1,678
13 Members	3,818	3,889	5,346	5,445	6,277	6,682	1,711
14 Members	4,075	4,151	5,705	5,811	6,400	6,813	1,744
15 Members	4,332	4,413	6,064	6,178	6,523	6,944	1,777
16 Members	4,588	4,674	6,424	6,544	6,646	7,075	1,810
17 Members	4,845	4,936	6,770	6,910	6,770	7,206	1,843
18 Members	5,102	5,198	6,893	7,277	6,893	7,337	1,876
19 Members	5,358	5,459	7,016	7,468	7,016	7,468	1,909
20 Members	5,615	5,721	7,139	7,599	7,139	7,599	1,942

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule **130.4(3)**, “Monthly Income Increment Levels According to Family Size” table, as follows:

Monthly Income Increment Levels According to Family Size

Income
Increment
Levels

	1	2	3	4	5	6	7	8	9	10	Half-Day Fee
A	702 \$ 712	945 \$ 960	1189 \$1208	1434 \$1457	1677 \$1705	1921 \$1954	2165 \$2203	2408 \$2451	2652 \$2700	2897 \$2949	\$0.00
B	739 749	995 1010	1252 1272	1509 1534	1765 1795	2022 2057	2279 2319	2535 2580	2792 2842	3049 3104	\$0.50
C	781 791	1051 1067	1322 1343	1594 1620	1864 1896	2135 2172	2407 2449	2677 2724	2948 3001	3220 3278	\$1.00
D	824 835	1110 1126	1396 1418	1683 1711	1968 2002	2254 2294	2542 2586	2827 2877	3113 3169	3400 3461	\$1.50
E	871 882	1172 1189	1474 1498	1777 1806	2078 2114	2381 2422	2684 2731	2985 3038	3287 3347	3591 3655	\$2.00
F	919 931	1237 1256	1556 1582	1877 1908	2195 2232	2514 2558	2834 2884	3152 3208	3472 3534	3792 3860	\$2.50
G	971 984	1307 1326	1644 1670	1982 2014	2318 2357	2655 2701	2993 3045	3329 3388	3666 3732	4004 4076	\$3.00
H	1025 1039	1380 1401	1736 1764	2093 2127	2448 2489	2803 2852	3161 3216	3515 3578	3871 3941	4229 4304	\$3.50
I	1083 1097	1457 1479	1833 1863	2210 2246	2585 2629	2960 3012	3338 3396	3712 3778	4088 4162	4465 4545	\$4.00
J	1143 1158	1539 1562	1936 1967	2334 2372	2729 2776	3126 3181	3525 3586	3920 3990	4317 4395	4715 4800	\$4.50
K	1207 1223	1625 1649	2044 2077	2465 2505	2882 2931	3301 3359	3722 3787	4140 4213	4559 4641	4979 5069	\$5.00
L	1275 1292	1716 1742	2158 2193	2603 2645	3044 3095	3486 3547	3930 3999	4371 4449	4814 4901	5258 5353	\$5.50
M	1346 1364	1812 1839	2279 2316	2748 2793	3214 3269	3681 3746	4151 4223	4616 4698	5084 5175	5553 5652	\$6.00

[Filed Emergency 5/16/03, effective 7/1/03]

[Published 6/11/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC
Supplement 6/11/03.

ARC 2519B**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 60, "Entrepreneurial Ventures Assistance Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2360B** on March 19, 2003. The IDEB Board adopted the amendments on May 15, 2003.

Item 1 adds a new definition of an "eligible business." Start-up companies, early-stage companies and existing companies that are developing a new product or new technology would be eligible to apply for funding.

Item 2 increases the amount of financial assistance available for start-up or early-stage growth activities from \$50,000 to \$250,000.

Item 3 increases the total award for technical assistance activities from \$10,000 to \$25,000.

Item 4 prohibits funding for businesses engaged in personal services, consulting and franchises.

Item 5 is a minor reformatting of the rule.

A public hearing to receive comments about the proposed amendments was held on April 8, 2003. No comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code sections 15.338 and 15.339.

These amendments will become effective on July 16, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [60.2, 60.4, 60.5, 60.7(3)"a"(2), 60.7(3)"d"] is being omitted. These amendments are identical to those published under Notice as **ARC 2360B**, IAB 3/19/03.

[Filed 5/22/03, effective 7/16/03]
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[For replacement pages for IAC, see IAC Supplement 6/11/03.]

ARC 2537B**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, "Complaints, Investigations, Contested Case Hearings," and Chapter 12, "Criteria of Professional Practices," Iowa Administrative Code.

These amendments set forth procedures to require the denial or revocation of a license based upon proof of conviction of certain delineated criminal offenses as mandated in 2002 Iowa Acts, Senate File 2258, which amends Iowa Code section 272.2(14).

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2198B**. A public hearing on the amendments was held on January 14, 2003.

One person attended the public hearing; the person, who represented a professional organization, did not support the rules. The Board received two letters of support and one oral comment of support at a Board meeting. The letters of support were from two professional organizations, and the oral comments were from an individual representing school district human resources personnel.

The Board reviewed the oral and written comments and modified the amendments in response to the comments. The changes are not substantive but, rather, editorial and clarification changes. In subrules 11.35(2) and 12.2(2), language pertaining to a deferred judgment was moved from the end of the subrules to the introductory paragraphs regarding disqualifying criminal convictions.

These amendments will become effective July 16, 2003.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are adopted.

ITEM 1. Amend rule 282—11.35(272) as follows:

282—11.35(272) Application denial and appeal. The executive director is authorized by Iowa Code section 272.7 to grant or deny applications for licensure. If the executive director denies an application for an initial or exchange license, certificate, or authorization, the executive director shall send to the applicant by regular first-class mail written notice identifying the factual and legal basis for denying the application. If the executive director denies an application to renew an existing license, certificate, or authorization, the provisions of rule 11.36(272) shall apply.

11.35(1) Grounds Mandatory grounds for license denial. The executive director ~~may~~ shall deny an application based on the grounds set forth in Iowa Code sections ~~section~~ 272.2(14) and 272C.6., including:

- a. *The license application is fraudulent.*
- b. *The applicant's license or certification from another state is suspended or revoked.*
- c. *The applicant fails to meet board standards for application or for license renewal.*
- d. *The applicant is less than 21 years of age, except that a coaching authorization or paraeducator certificate may be issued to an applicant who is 18 years of age or older, as provided in Iowa Code sections 272.12 and 272.31. A student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited purpose license and who is seeking to teach as part of the practicum or internship may be less than 21 years of age.*
- e. *The applicant has been convicted of one of the disqualifying criminal convictions set forth in paragraph 11.35(2) "a."*

11.35(2) Conviction of a crime and founded child abuse.

a. *Disqualifying criminal convictions. The board shall deny an application for licensure if the applicant or licensee has been convicted, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:*

(1) *Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;*

(2) *Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:*

1. *First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;*

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- 2. *Lascivious acts with a child;*
 - 3. *Detention in a brothel;*
 - 4. *Assault with intent to commit sexual abuse;*
 - 5. *Indecent contact with a child;*
 - 6. *Sexual exploitation by a counselor; or*
 - 7. *Lascivious conduct with a minor;*
 - (3) *Incest involving a child as prohibited by Iowa Code section 726.2;*
 - (4) *Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or*
 - (5) *Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.*
 - b. *Other criminal convictions and founded child abuse.*
- When determining whether a person should be denied licensure based on the conviction of a *any other* crime, including a felony, or a founded report of child abuse, the executive director and the board shall consider the following:
- a. (1) The nature and seriousness of the crime or founded abuse in relation to the position sought;
 - b. (2) The time elapsed since the crime or founded abuse was committed;
 - c. (3) The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
 - d. (4) The likelihood that the person will commit the same crime or abuse again;
 - e. (5) The number of criminal convictions or founded abuses committed; and
 - f. (6) Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

11.35(3) to 11.35(5) No change.

ITEM 2. Amend subrule 12.2(2) as follows:

12.2(2) *Criminal convictions and founded child abuse.*

a. *Disqualifying criminal convictions. The board shall deny an application for licensure and shall revoke a previously issued license if the applicant or licensee has been convicted, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:*

(1) *Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;*

(2) *Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:*

- 1. *First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;*
- 2. *Lascivious acts with a child;*
- 3. *Detention in a brothel;*
- 4. *Assault with intent to commit sexual abuse;*
- 5. *Indecent contact with a child;*
- 6. *Sexual exploitation by a counselor; or*
- 7. *Lascivious conduct with a minor;*
- (3) *Incest involving a child as prohibited by Iowa Code section 726.2;*
- (4) *Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or*
- (5) *Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.*

b. *Other criminal convictions and founded child abuse.*

In determining whether a person should be denied a license or whether a licensee should be disciplined based upon a *any other* criminal conviction or a founded report of physical or sexual abuse of a child, the board shall consider:

- a. (1) The nature and seriousness of the crime or founded abuse in relation to the position sought;

b. (2) The time elapsed since the crime or founded abuse was committed;

c. (3) The degree of rehabilitation which has taken place since the crime or founded abuse was committed;

d. (4) The likelihood that the person will commit the same crime or abuse again;

e. (5) The number of criminal convictions or founded abuses committed; and

f. (6) Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

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ARC 2527B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this rule making is to increase the current fixed dollar amount of \$29 per ton to \$39 per ton the maximum annual Title V Operating Permit fee that the Environmental Protection Commission can establish on the first 4,000 tons of actual emissions of each regulated pollutant emitted annually from a major source. Budget projections and estimates of actual emissions indicate that the annual fee will have to be increased above \$29 per ton to maintain the current level of service in state fiscal years 2004, 2005, and 2006.

The increase from \$29 per ton to \$39 per ton is based on budget projections for the next three state fiscal years and estimates of the actual emissions during this period. Basing the fee level cap on budget projections for the next three state fiscal years should prevent the need for the Commission to change the fee level cap provision in subrule 22.106(1) again for at least this period of time. The need to increase the fee level cap to maintain the current level of services is the result of the combination of increases in staff salaries due to negotiated contract increases and projected decreases in actual emissions over this period. The \$39 per ton fee level cap includes an additional 20 percent that was added to the resulting dollar per ton estimates for each of the three state fiscal years to account for estimated increases in other nonsalary expenditures, such as indirect costs and increases in the costs of operating an ambient air monitoring network.

The data, assumptions, and methodology used to arrive at the \$39 per ton fee level cap were reviewed and discussed in detail at a meeting on January 9, 2003, with a representative group of companies that pay Title V fees and the Association of Business and Industry. The data, assumptions, and methodology were determined to be reasonable based on past budget information, available salary contract information, and past actual emissions trends. The Department will continue to work with Title V fee payers and the Association of Business and Industry to reduce and control the Department's

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

costs of service and to investigate alternate funding mechanisms.

Subrule 22.106(1) requires that the Environmental Protection Commission set the annual fee for the coming fiscal year based on the reasonable cost to run the program and the proposed budget no later than the May Commission meeting. For the fee level cap rule change to become effective prior to the May Commission meeting, this amendment was also Adopted and Filed Without Notice and was published in the Iowa Administrative Bulletin on March 19, 2003, as **ARC 2361B**.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 19, 2003, as **ARC 2356B**. A public hearing was held on April 8, 2003. No comments were received at the public hearing or during the public comment period. This amendment has not been modified from that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 455B.133.

This amendment shall become effective July 16, 2003.

The following amendment is adopted.

Amend subrule 22.106(1) as follows:

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than \$29 \$39 per ton without adopting the change pursuant to formal rule making.

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ARC 2523B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," and Chapter 72, "Criteria for Approval," Iowa Administrative Code.

The amendments change the current Class A use from a single use designation of primary contact recreation to three designations; establish numerical criteria for bacteria using *E. coli* as the indicator bacteria and change the time period when the bacteria standards apply; provide for the adoption by reference of "Surface Water Classification" in new subrule 61.3(5); and correct and clarify the locations or names of several water bodies in subrules 61.2(2) and 72.50(2).

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 8, 2003, as **ARC 2228B**. Seven public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from 95 persons and organizations. The majority of the comments dealt with the proposed addition of the Class B(CW) designation to South Cedar Creek, with many comments both for and against the proposed designation. Several comments also addressed the Class A1, A2, and A3 use designations and the *E. coli* bacteria criteria, with the majority in support of the changes. No comments were received on the adoption by reference of "Surface Water Classification" or on the corrections and clarifications of the locations or names of several water bodies. A responsiveness summary addressing the comments can be obtained from the Department.

The adopted amendments have been modified from those published under Notice of Intended Action as follows:

In Item 4 and Item 5, the words "exceed the high flow cutoff" have been removed. No definition of "high flow cutoff" was included in the Notice, and the public was asked to comment on a definition. Based on the comments received, the Commission decided that it would not be appropriate to include the phrase "high flow cutoff" in the Water Quality Standards. It is the Department's intent that these standards provide the basic framework for protecting the recreational uses and that implementation decisions be made by the programs charged with evaluating water quality or effecting regulation based on the standards. The phrase "when the Class 'A1,' 'A2,' or 'A3' uses can reasonably be expected to occur" has been added to Item 5 to replace the phrase "high flow cutoff." This phrase describes the intent of the three proposed recreational use designations to provide standards for protection of recreational uses when those uses are occurring in the water body.

In Item 7, the rule-referenced document "Surface Water Classification" does not include the addition of the Class B(CW) Cold Water use designation to approximately a 1-mile segment of the upper portion of South Cedar Creek in Clayton County. At their May 19, 2003, meeting, the Environmental Protection Commission acted to terminate rule-making efforts on the addition of the Class B(CW) designation. This action was taken following consideration of comments made by the public. The Department plans to develop a cold water stream assessment protocol and reassess South Cedar Creek at a later time.

In Item 8, subrule 72.50(2) has been changed to include the correct location of the stream mouth under the second listing of Clear Creek in Allamakee County. The Notice of Intended Action listed the mouth location incorrectly.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments shall become effective July 16, 2003. The following amendments are adopted.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 1. Amend subrule **61.2(2)**, paragraph **"b,"** subparagraphs **(44)** and **(47)**, as follows:

(44) Bohemian Creek, mouth (Winneshiek County) to Howard County Road 58 V58 (west line of section 2, T97N, R11W, Howard County).

(47) Unnamed Stream Creek (aka Trout Run), mouth to south line of section 27, T98N, R8W, Winneshiek County.

ITEM 2. Amend subrules **61.2(4)**, **61.2(5)**, and **62.8(2)** by striking "March 29, 2002" and inserting "July 16, 2003."

ITEM 3. Amend subrule **61.3(1)**, paragraph **"b,"** as follows:

b. Designated use segments. These are water bodies which maintain flow throughout the year, or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community of significance.

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) Primary contact recreation *recreational use* (Class "A" "A1"). Waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

(2) Secondary contact recreational use (Class "A2"). *Waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. During the recreational use, the probability of ingesting appreciable quantities of water is minimal. Class A2 uses include fishing, commercial and recreational boating, any limited contact incidental to shoreline activities and activities in which users do not swim or float in the water body while on a boating activity.*

(3) Children's recreational use (Class "A3"). *Waters in which recreational uses by children are common. Class A3 waters are water bodies having definite banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.*

(4) Cold water aquatic life (Class "B(CW)"). Waters in which the temperature, flow, and other habitat characteristics are suitable for the maintenance of a wide variety of cold water species, including nonreproducing populations of trout and associated aquatic communities.

(5) High quality water (Class "HQ"). Waters with exceptionally better quality than the levels specified in Tables 1, 2, and 3 and with exceptional recreational and ecological importance. Special protection is warranted to maintain the unusual, unique or outstanding physical, chemical, or biological characteristics which these waters possess.

(6) High quality resource water (Class "HQR"). Waters of substantial recreational or ecological significance which possess unusual, outstanding or unique physical, chemical, or biological characteristics which enhance the beneficial uses and warrant special protection.

(7) Significant resource warm water (Class "B(WW)"). Waters in which temperature, flow and other habitat characteristics are suitable for the maintenance of a wide variety of reproducing populations of warm water fish and associated aquatic communities, including sensitive species.

(8) Limited resource warm water (Class "B(LR)"). Waters in which flow or other physical characteristics limit the ability of the water body to maintain a balanced warm water community. Such waters support only populations com-

posed of species able to survive and reproduce in a wide range of physical and chemical conditions, and are not generally harvested for human consumption.

(9) Lakes and wetlands (Class "B(LW)"). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(10) Drinking water supply (Class "C"). Waters which are used as a raw water source of potable water supply.

ITEM 4. Amend subrule **61.3(2)**, paragraph **"h,"** as follows:

h. *Water The Escherichia coli (E. coli) content of water which enters a sinkhole or losing stream segment, regardless of the water body's designated use, shall not exceed a fecal coliform content of 200 Geometric Mean value of 126 organisms/100 ml or a sample maximum value of 235 organisms/100 ml. except when the waters are materially affected by surface runoff; but in no case shall fecal coliform levels downstream from a discharge which may contain pathogens to humans be more than 200 organisms/100 ml higher than the background level upstream from the discharge. No new wastewater discharges will be allowed on watercourses which directly or indirectly enter sinkholes or losing stream segments.*

ITEM 5. Amend subrule **61.3(3)**, paragraph **"a,"** as follows:

a. Class "A" waters. Waters which are designated Class "A" "A1," "A2," or "A3" in subrule 61.3(5) are to be protected for *primary contact recreation primary contact, secondary contact, and children's recreational uses.* The general criteria of subrule 61.3(2) and the following specific criteria apply to all Class "A" waters.

(1) *From April 1 to October 31, the fecal coliform content shall not exceed 200 organisms/100 ml. The Escherichia coli (E. coli) content shall not exceed the levels noted in the Bacteria Criteria Table when the Class "A1," "A2," or "A3" uses can reasonably be expected to occur. except when the waters are materially affected by surface runoff; but in no case shall fecal coliform levels downstream from a discharge which may contain pathogens to humans be more than 200 organisms/100 ml higher than the background level upstream from the discharge.*

Bacteria Criteria Table (organisms/100 ml of water)

Use	Geometric Mean	Sample Maximum
<i>Class A1</i>		
<i>3/15 – 11/15</i>	<i>126</i>	<i>235</i>
<i>11/16 – 3/14</i>	<i>Does not apply</i>	<i>Does not apply</i>
<i>Class A2 (Only)</i>		
<i>3/15 – 11/15</i>	<i>630</i>	<i>2880</i>
<i>11/16 – 3/14</i>	<i>Does not apply</i>	<i>Does not apply</i>
<i>Class A2 and B(CW) or HQ</i>		
<i>Year-Round</i>	<i>630</i>	<i>2880</i>
<i>Class A3</i>		
<i>3/15 – 11/15</i>	<i>126</i>	<i>235</i>
<i>11/16 – 3/14</i>	<i>Does not apply</i>	<i>Does not apply</i>

Class A1 - Primary Contact Recreational Use, Class A2 - Secondary Contact Recreational Use, Class A3 - Children's Recreational Use

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

When a water body is designated for more than one of the recreational uses, the most stringent criteria for the appropriate season shall apply.

(2) The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of waste discharge shall not exceed 0.5 pH units.

ITEM 6. Amend subrule **61.3(3)**, paragraph “b,” introductory paragraph, as follows:

b. Class “B” waters. All waters which are designated as Class B(CW), B(WW), B(LR), or B(LW) are to be protected for wildlife, fish, aquatic and semiaquatic life, ~~and secondary contact water uses.~~ The following criteria shall apply to all Class “B” waters designated in subrule 61.3(5).

ITEM 7. Rescind subrule 61.3(5) and adopt the following new subrule in lieu thereof:

61.3(5) Surface water classification. The department hereby incorporates by reference “Surface Water Classification,” effective July 16, 2003. This document may be obtained from the Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, or on the department’s Web site at <http://www.state.ia.us/dnr/organiza/epd/wtresrce/wquality/index.htm>.

ITEM 8. Amend subrule **72.50(2)**, selected protected streams by county, as follows:

ALLAMAKEE COUNTY

Bear Creek, mouth (S1, ~~T100N, R5W~~ T99N, R6W, Allamakee Co.) to west county line;

Clear Creek, mouth (S29, ~~T99N, R3W~~ S35, T100N, R5W, Allamakee Co.) to north line of S15, T100N, R5W;

Clear Creek, mouth (S35, S29, T99N, R3W, Allamakee Co.) to west line of S25, T99N, R4W;

Silver Creek, mouth (S4, T99N, R5W, Allamakee Co.) to south line of S31, T99N, R5W;

Teeple Creek, mouth (S24, T97N, R6W, Allamakee Co.) to ~~north line of~~ spring source in S11, T97N, R6W;

CLAYTON COUNTY

Buck Creek, mouth (S29, T93N, R2W, Clayton Co.) to west line of S9, T93N, R3W;

Roberts Creek, mouth (SE 1/4, S25, T93N, R5W, Clayton Co.) to confluence with an unnamed creek (SE 1/4, S15, T95N, R6W, Clayton Co.);

South Cedar Creek (a.k.a. Cedar Creek), mouth (S33, T92N, R3W, Clayton Co.) to north line of S30, T93N, R4W R3W, Clayton Co.;

FAYETTE COUNTY

Bear Creek, mouth (S8, T92N, R7W, Fayette Co.) to west line of S6, T92N, R7W;

Volga River, east county line to confluence with an unnamed creek (NW 1/4, NE 1/4 of SE 1/4, S24, T93N, R10W, Fayette Co.);

HOWARD COUNTY

Beaver Creek, mouth (S19, T100N, R12W, Howard Co.) to south line of S29, T100N, R13W;

JACKSON COUNTY

Storybrook Hollow Storybook Hollow, mouth (S7, T86N, R4E, Jackson Co.) to south line of S12, T86N, R3E, Jackson Co.;

WINNESHIEK COUNTY

Unnamed tributary to Trout Creek (a.k.a. Trout Run), mouth (S27, T98N, R8W, Winneshiek Co.) to south line of S27, T98N, R8W;

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ARC 2524B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission hereby amends Chapter 109, “Special Waste Authorizations,” Iowa Administrative Code.

These amendments add stabilized grit, bar screenings and grease skimmings to the category of general special wastes. Adding these wastes to the category of general special wastes will eliminate the need for a special waste authorization for the delivery of these common wastes from a wastewater facility to a permitted sanitary landfill.

These amendments also add conditions and requirements that shall be met by the sanitary landfill and the generator for the disposal of petroleum-contaminated soil, the disposal of asbestos-containing waste, and the disposal of stabilized grit, bar screenings and grease skimmings. The conditions and requirements for the disposal of petroleum-contaminated soil and for the disposal of asbestos-containing waste were previously part of a sanitary landfill’s permit language. Adding the conditions and requirements for the disposal of these three general special wastes will shorten a landfill’s permit language and place the requirements in Chapter 109 where they can be specifically addressed.

These amendments correct an omission in 567—109.9(455B,455D), which addresses infectious waste. This correction is needed to clarify an important part of that rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 19, 2003, as **ARC 2357B**. A public hearing was held on April 8, 2003. Written comments were received by the Department through the end of the business day on April 8, 2003. There have been no changes to the Notice of Intended Action.

These amendments are intended to implement Iowa Code section 455B.304.

These amendments shall become effective July 16, 2003.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [109.2, 109.3, 109.4, 109.9, 109.11] is being omitted. These amendments are identical to those published under Notice as **ARC 2357B**, IAB 3/19/03.

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ARC 2540B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments provide the annual updates of:

- The statewide average cost of nursing facility services to a person paying privately, which is used to determine the number of months of ineligibility for Medicaid long-term care services when a person has transferred assets to attain or maintain Medicaid eligibility.

- The statewide average charges or maximum Medicaid rates for care in various medical institutions, which affect the disposition of income and principal in a medical assistance income (Miller-type) trust and determine whether a person with such a trust qualifies for Medicaid.

Based on survey data, the average private-pay cost of nursing facility services has increased. The period of ineligibility due to a transfer of assets is determined by dividing the uncompensated value of the asset by this average cost. An increase in the average cost decreases the period of ineligibility for long-term care services, such as nursing home care, home- and community-based waiver services, home health care, home and community care for functionally disabled elderly people, and personal care services.

When a person with a medical assistance income trust has income above the limit for Medicaid eligibility, but below the average charge for care in the type of facility where the person lives, Iowa Code section 633.709 directs the trustee to release to the beneficiary only enough income to reach the limit for Medicaid eligibility. If the person's gross income is above the average cost of care, the trustee must release all of the income, making the person ineligible for Medicaid. An increase in the statewide average charge allows more people to become eligible for Medicaid using a medical assistance income trust.

Based on survey data, the statewide average charges for care in nursing facilities, Medicare certified hospital-based skilled facilities, and non-hospital-based skilled facilities have increased. There is a large increase in the average charge for non-hospital-based skilled care due to the fact that five facilities providing care to special populations were included in the survey this year. The rates from these facilities have not been included in the average in past years.

The Department provides the maximum Medicaid reimbursement rate for care in an intermediate care facility for persons with mental retardation (ICF/MR) based on rule 441—82.5(249A). The maximum Medicaid reimbursement rate for ICF/MR care has also increased. The average charge for care in a state mental health institute has decreased from \$10,547 per month to \$9,991 per month.

The average charges for care in a psychiatric medical institution for children are based on Medicaid rates because Medicaid is the primary payer of these services. Since those Medicaid reimbursement rates have been held constant for state fiscal year 2003, the average charge for this type of care remains the same, at \$4,477 per month.

These amendments do not provide for waivers in specified situations because everyone should be subject to the same amounts in determining Medicaid eligibility. Individuals

may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

The Department finds that notice and public participation are unnecessary because the amendments simply update existing rules pursuant to established policy based on mathematical calculations. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Council on Human Services adopted these amendments May 14, 2003.

These amendments are intended to implement Iowa Code sections 249A.4 and 633.707.

These amendments shall become effective July 16, 2003. The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

75.23(3) Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The *department shall determine the average statewide cost to a private-pay resident shall be determined by the department and updated annually* for nursing facilities *and update the cost annually*. For the period from July 1, 2002 2003, through June 30, 2003 2004, this average statewide cost shall be \$3,111.69 \$3,575.34 per month or \$102.36 \$117.61 per day.

ITEM 2. Amend subrule **75.24(3)**, paragraph "b," first unnumbered paragraph and subparagraphs (1) through (5), as follows:

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from July 1, 2002 2003, to June 30, 2003 2004, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is \$2,926 \$3,180 per month.

(2) The average statewide charge to a private-pay resident of a hospital-based skilled nursing facility is \$10,435 \$10,863 per month.

(3) The average statewide charge to a private-pay resident of a non-hospital-based skilled nursing facility is \$4,767 \$7,368 per month.

(4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is \$10,282 \$10,734 per month.

(5) The average statewide charge to a resident of a mental health institute is \$10,547.46 \$9,991 per month.

[Filed Without Notice 5/16/03, effective 7/16/03]

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ARC 2515B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments clarify the current Medicaid reimbursement methodology for hospital inpatient services, based on diagnosis-related groups (DRGs), and hospital outpatient services, based on ambulatory patient groups (APGs). Rebasings and recalibration of DRG and APG weights scheduled for 2002 have been delayed because the current rules do not contain enough specificity on certain technical issues. These amendments:

- Clarify the use of data from critical access hospitals in setting and rebasing inpatient and outpatient hospital reimbursement rates. Since critical access hospitals are reimbursed at their actual costs based on retrospective cost settlement instead of on the DRG/APG system, it is not appropriate to include their cost data in the calculations that determine DRG and APG reimbursement. These amendments provide that data from a hospital be excluded from statewide calculations when the hospital was reimbursed as a critical access hospital during any period of time included in the base-year cost report.

- Specify the cost reports to be used in rebasing. In order for the Department to achieve timely calculation of rates, these amendments impose a deadline of May 31 for hospitals to submit cost reports to be used in rebasing.

- Correct the formula definition for "long stay" outliers and a departmental address. The purpose of long stay outlier payments is to provide financial protection to hospitals against a few atypically expensive cases. Using the lesser of a specified statistical value or absolute value provides this protection. If the greater of these values is used, the intended financial protection is greatly reduced.

- Delete an unneeded definition of "indirect medical education costs" and the provision allowing hospitals to appeal their Medicaid rates after Medicare has finalized its review of their cost reports. This appeal provision has not been used and is unnecessary because the Department's fiscal agent reviews and adjusts cost reports pursuant to Medicare principles. Such appeals would be burdensome and costly because each one would affect all hospital reimbursement rates and could cause changes in Medicaid rates long after they have been set and funding has been appropriated.

These amendments do not provide for waivers in specified situations because the Department believes that reimbursement rates should be calculated consistently for all hospitals. A hospital may request a waiver of any part of the reimbursement methodology under the Department's general rule at 441—1.8(17A,217).

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2392B**. The Department also held a public hearing to receive comments on these amendments. The Iowa Hospital Association commented that the deadline for submitting cost reports to be used in rebasing hospital rates was unnecessary, but requested an exception for changes in federal cost report deadlines and the use of an inflation factor as an alternative to cost report data. As a result of these comments, the Department has:

- Changed the cost report reference in the definition of "direct medical education rate" to "CMS 2552" in paragraph 79.1(5)"a." The definition now reads as follows:

"'Direct medical education rate' shall mean a rate calculated for a hospital reporting medical education costs on the Medicare cost report (CMS 2552). The rate is calculated using the following formula: Direct medical education costs are multiplied by inflation factors. The result is divided by the hospital's case-mix index, then is further divided by net discharges. This formula is limited by funding availability that is legislatively appropriated.

"For purposes of calculating the disproportionate share rate only, a separate direct medical education rate shall be determined for any hospital that qualifies for a disproportionate share payment only as a children's hospital based on a distinct area or areas serving children, using the direct medical education costs, case-mix index, and net discharges of the distinct area or areas in the hospital where services are provided predominantly to children under 18 years of age."

- Added the following language to subparagraphs 79.1(5)"k"(2) and 79.1(16)"j"(2): "Cost reports used in rebasing shall be the hospital fiscal year-end Form CMS 2552, Hospital and Healthcare Complex Cost Report, as submitted to Medicare in accordance with Medicare cost report submission timelines for the hospital fiscal year ending during the preceding calendar year. If a hospital does not provide this cost report to the Medicaid fiscal agent by May 31 of a year in which rebasing occurs, the most recent submitted cost report will be used with the addition of a hospital market basket index inflation factor."

Subparagraph 79.1(5)"k"(2) now reads as follows:

"(2) Base amounts shall be rebased and weights recalibrated in 2005 and every three years thereafter. Cost reports used in rebasing shall be the hospital fiscal year-end Form CMS 2552, Hospital and Healthcare Complex Cost Report, as submitted to Medicare in accordance with Medicare cost report submission timelines for the hospital fiscal year ending during the preceding calendar year. If a hospital does not provide this cost report to the Medicaid fiscal agent by May 31 of a year in which rebasing occurs, the most recent submitted cost report will be used with the addition of a hospital market basket index inflation factor."

Subparagraph 79.1(16)"j"(2) now reads as follows:

"(2) Base amounts shall be rebased and APG weights recalibrated in 2005 and every three years thereafter. Cost reports used in rebasing shall be the hospital fiscal year-end Form CMS 2552, Hospital and Healthcare Complex Cost Report, as submitted to Medicare in accordance with Medicare cost report submission timelines for the hospital fiscal year ending during the preceding calendar year. If a hospital does not provide this cost report to the Medicaid fiscal agent by May 31 of a year in which rebasing occurs, the most recent submitted cost report will be used with the addition of a hospital market basket index inflation factor."

The Council on Human Services adopted these amendments on May 14, 2003.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective July 16, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [79.1(5), 79.1(16)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2392B**, IAB 4/2/03.

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ARC 2517B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 80, "Procedure and Method of Payment," Iowa Administrative Code.

These amendments change the procedures for obtaining prior authorization for payment of Medicaid services and for submitting claims. These amendments are necessary because the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires health plans to allow these transactions to be submitted electronically, but the federal forms for electronic attachments will not be ready by the implementation date.

These amendments will affect Medicaid providers, such as physicians, hospitals, dentists, audiologists, medical equipment suppliers, and home health agencies, that are required to submit additional documentation to justify requests for prior authorization or payment. These amendments add two forms that will enable the Medicaid fiscal agent to match prior authorizations or claims submitted electronically with supporting documentation that cannot be submitted electronically at this time. The amendments also correct two references in the prior authorization process.

These amendments do not provide for waivers in specified situations because they confer a benefit by providing a process by which electronic claim submissions can be matched with the supporting clinical documentation.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2390B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on May 14, 2003.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective July 16, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule 79.8(1) as follows:

79.8(1) Making the request.

a. Requests Providers may submit requests for prior approval authorization for any items or procedures shall be made by mail or by facsimile transmission (fax) using Form 470-0829, Request for Prior Authorization. Requests not related to prior authorization for dental procedures may be submitted by facsimile (fax), or mail. electronically using the Accredited Standards Committee (ASC) X12N 278 transaction, Health Care Services Request for Review and Response. Requests for prior authorization for drugs may also be made by telephone.

b. Requests Providers shall send requests for prior approval authorization shall be sent to Consultec, Inc., P.O. Box 14422, Des Moines, Iowa 50306-3422 the Medicaid fiscal agent. The request should include address the relevant criteria applicable to the particular service, medication or equipment, for which prior approval authorization is sought, according to the criteria outlined in rule 441—78.28(249A).

Copies of history and examination results may be attached to rather than incorporated in the letter.

c. If a request for prior authorization submitted electronically requires attachments or supporting clinical documentation and a national electronic attachment has not been adopted, the provider shall:

(1) Use Form 470-3970, Prior Authorization Attachment Control, as the cover sheet for the paper attachments or supporting clinical documentation; and

(2) Reference on Form 470-3970 the attachment control number submitted on the ASC X12N 278 electronic transaction.

ITEM 2. Amend subrule **80.2(1)** as follows:

Amend paragraph "**c**," introductory paragraph, as follows:

c. Claims submitted electronically after implementation of the Health Insurance Portability and Accountability Act of 1996 shall be filed on the Accredited Standards Committee (ACS ASC) X12N 837 transaction, Health Care Claim. The department shall send all providers written notice when the Act is implemented.

Adopt **new** paragraph "**d**" as follows:

d. If a claim submitted electronically requires attachments or supporting clinical documentation and a national electronic attachment has not been adopted, the provider shall:

(1) Use Form 470-3969, Claim Attachment Control, as the cover sheet for the paper attachments or supporting clinical documentation; and

(2) Reference on Form 470-3969 the attachment control number submitted on the ASC X12N 837 electronic transaction.

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ARC 2516B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments change two of the accountability measures used to determine whether a non-state-owned nursing facility qualifies for additional reimbursement based on its performance. The accountability measures were implemented July 1, 2002, as part of the change to a case-mix methodology for nursing facility reimbursement. After the first year of experience with the measures, the Department reconvened the work group that developed the initial measures to review the results. Based on feedback from the work group, the Department is implementing the following changes:

- Amend the terminology of measure 2, "substantial compliance with survey," to substitute the phrase "regulatory compliance," since the term "substantial compliance" has a different meaning within the survey process and has caused confusion. Under the final amendment, the standard for compliance is that no revisit was required, and the measure-

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ment period includes any recertification survey or complaint investigation completed within the preceding calendar year.

- Amend measure 8, "low administrative costs," to remove references to low utilization of contracted nursing hours. The work group did not agree that this measure was a good predictor of quality and efficiency. Any use of contracted nursing hours disqualified a facility on this measure, even if the occasional use of contracted nursing hours was a more cost-effective choice for a facility.

These amendments do not provide for waivers in specified situations because all non-state-owned facilities should be subject to the same standards for determining additional reimbursement. A facility may request a waiver of any part of the reimbursement methodology under the Department's general rule at 441—1.8(17A,217).

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2391B**. The Department also held a public hearing for the purpose of receiving comments. The Department received no comments on these amendments. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on May 14, 2003.

These amendments are intended to implement 2001 Iowa Acts, chapter 192, section 4.

These amendments shall become effective July 16, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **81.6(16)**, paragraph "g," subparagraph (2), as follows:

Amend the introductory paragraph as follows:

(2) *Substantial Regulatory compliance with survey.*

Amend numbered paragraphs "1" and "2" as follows:

1. Standard. Facilities shall be *considered to be in substantial regulatory compliance with state and federal licensing and certification surveys and any subsequent surveys, complaint investigations, or if no on-site revisit is required for recertification surveys or for any substantiated complaint investigations during the measurement period. Substantial compliance is defined as surveys, complaint investigations, or revisit investigations conducted within a calendar year that do not result in "F" level or greater deficiencies and that have no more than a combined total of three deficiencies at an "E" level or higher, pursuant to 42 CFR, Part 483, Subparts B and C, as amended to July 30, 1999.*

2. Measurement period. The measurement period shall be the latest annual *include any recertification survey or complaint investigations* completed on or before December 31 of each year and any subsequent surveys, complaint investigations, or revisit investigations completed between the annual survey date and December 31.

ITEM 2. Amend subrule **81.6(16)**, paragraph "g," subparagraph (8), as follows:

Amend the introductory paragraph as follows:

(8) *Low administrative costs and low utilization of contracted nursing.*

Amend numbered paragraphs "1" and "2" as follows:

1. Standard. A nursing facility's *per resident day percentage of administrative costs and per resident day contracted nursing hours to total costs* shall each be at or below the fiftieth percentile. *Contracted nursing hours shall be normalized to remove variations in staff hours associated with different levels of resident case mix. The case mix index used to normalize contracted nursing hours shall be the facility cost report period case mix index.*

2. Measurement period. The low administrative costs and low utilization of contracted nursing shall be calculated using the latest Form 470-0030, Financial and Statistical Report, with a fiscal year end of December 31 or earlier.

[Filed 5/16/03, effective 7/16/03]

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ARC 2522B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.24, the Department of Public Health hereby amends Chapter 88, "Volunteer Health Care Provider Program," Iowa Administrative Code.

The rules in Chapter 88 describe the eligibility of health care providers providing free health services through qualified programs to be defended and indemnified by the state of Iowa. These amendments add chiropractors, dental hygienists, and dental assistants to the health care provider professions eligible for the program. These amendments further clarify the existing rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2381B**. A public hearing was held on April 22, 2003.

One person presented an oral and written comment requesting clarification of the definition of "charitable organization." Changes cannot be made to the definition of "charitable organization" as the definition is in the Iowa Code. At the recommendation of the Assistant Attorney General, the following changes have been made to the Notice of Intended Action:

In Item 1, the definition of "health care provider" in rule 641—88.1(135) has been reworded by adding the word "licensed" after the phrase "nurse practitioner" and by adding the phrase "licensed or registered" after the phrase "dental assistant."

In Item 6, subrule 88.3(3) has been reworded for clarification.

The State Board of Health adopted these amendments on May 14, 2003.

These amendments will become effective July 16, 2003.

These amendments are intended to implement Iowa Code section 135.24.

The following amendments are adopted.

ITEM 1. Amend rule 641—88.1(135) as follows:

641—88.1(135) Definitions. For the purpose of these rules, the following definitions shall apply:

"Charitable organizations" means a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of medical, *chiropractic*, and dental services to children and to serve as a funding mechanism for provision of medical services, including but not limited to immunizations, to children.

"Health care provider" means a physician licensed under Iowa Code chapter 148, 150, or 150A, a physician assistant

PUBLIC HEALTH DEPARTMENT[641](cont'd)

licensed and practicing under a supervising physician pursuant to Iowa Code chapter 148C, *a chiropractor licensed under Iowa Code chapter 151*, a licensed practical nurse, ~~or a registered nurse, or a nurse practitioner licensed pursuant to Iowa Code chapter 152, or a dentist, or dental hygienist, or dental assistant licensed or registered pursuant to Iowa Code chapter 153.~~

ITEM 2. Amend rule 641—88.2(135) as follows:

641—88.2(135) Purpose. The volunteer health care provider program is established to defend and indemnify eligible health care providers providing free medical, *chiropractic*, and dental services through qualified programs as provided in Iowa Code section 135.24 and these rules.

ITEM 3. Amend rule 641—88.3(135), introductory paragraph, as follows:

641—88.3(135) Health care provider eligibility. To be eligible for protection as an employee of the state under Iowa Code chapter 669 for a claim arising from covered medical, *chiropractic*, or dental services, a health care provider must meet all of the following conditions at the time of the act or omission allegedly resulting in injury:

ITEM 4. Amend subrule 88.3(1) as follows:

88.3(1) Be licensed to practice under Iowa Code chapter 148, 148C, 150, 150A, *151*, 152, or 153.

ITEM 5. Amend subrule **88.3(2)**, paragraph “d,” as follows:

d. Comply with the agreement with the department concerning approved medical, *chiropractic*, or dental services and programs.

ITEM 6. Amend subrule 88.3(3) as follows:

88.3(3) ~~Have a current certificate of qualification from the applicable state licensing board based on review of the following records submitted by the health care provider:~~

a. ~~Verification that the health care provider holds Hold an active unrestricted license, in good standing, to practice in Iowa under Iowa Code chapter 148, 148C, 150, 150A, 151, 152, or 153.~~

b. ~~Verification that the health care provider has continuously held an active license in good standing since first licensed to practice the profession.~~

c. ~~Verification of good standing of any hospital and clinic affiliation or staff privileges held by the health care provider in the last ten years.~~

d. ~~a. Certified Physicians and dentists shall authorize release of information allowing certified statements to be sent to the board of medical examiners or board of dental examiners from the National Practitioner Data Bank, the Health Care Integrity and Protection Data Bank, and the Federation of State Medical Boards Disciplinary Data Bank, or State Dental Boards Disciplinary Data Bank, as appropriate, setting forth any malpractice judgments or awards, or disciplinary action involving the physician or dentist. The physician, or dentist Chiropractors shall request that the certified statements from the National Practitioner Data Bank and the State Chiropractic Boards Disciplinary Data Bank be sent directly to the board of chiropractic examiners by the data banks and shall pay the cost.~~

e. ~~b. A The health care provider shall provide a sworn statement from the health care provider attesting that the license to practice is free of restrictions. The statement shall describe any disciplinary action which has ever been initiated~~

against the health care provider by a professional licensing authority or health care facility, including any voluntary surrender of license or other agreement involving the health care provider's license to practice or any restrictions on practice, suspension of privileges, or other sanctions. The statement shall also describe any malpractice suits which have been filed against the health care provider and state whether any complaints involving professional competence have been filed against the health care provider with any licensing authority or health care facility.

~~f. Any additional materials requested by the board.~~

ITEM 7. Amend subrule **88.3(4)**, paragraph “e,” as follows:

e. Provide that the health care provider shall maintain proper medical, *chiropractic*, or dental records; and

ITEM 8. Amend rule 641—88.11(135) as follows:

641—88.11(135) Covered medical, *chiropractic*, or dental services. An eligible health care provider shall be afforded the protection of an employee of the state under Iowa Code chapter 669 only for claims for medical, *chiropractic*, or dental injury proximately caused by the health care provider's provision of covered health services.

88.11(1) Covered medical or dental services. Covered health services are only those which are:

1. Identified in the agreement with the department;
2. In compliance with these rules;
3. Provided by or under the direct supervision of the health care provider;

4. Health services of health disease prevention, health maintenance, health education, diagnosis, or treatment other than the administration of anesthesia; and surgical procedures, except minor surgical procedures and administration of local anesthesia for the stitching of wounds or the removal of lesions or foreign particles may be provided; and

5. Primary dental services which are preventive, diagnostic, restorative or emergency treatment including extraction.

88.11(2) Covered chiropractic services. Chiropractors shall practice only as authorized under Iowa Code chapter 151.

Experimental procedures or procedures and treatments which lack sufficient evidence of clinical effectiveness are excluded from the program.

ITEM 9. Amend subrule 88.12(1) as follows:

88.12(1) The claim involves medical, *chiropractic*, or dental injury proximately caused by covered health services which were identified and approved in the agreement with the department and then only to the extent the services were provided by or under the direct supervision of the health care provider, including claims based on negligent delegation of medical, *chiropractic*, or dental care.

ITEM 10. Amend subrule **88.13(3)**, paragraph “d,” as follows:

d. The program maintains medical, *chiropractic*, or dental records in accordance with accepted standards for a period of ten years.

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